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SUMMARY RECORD OF THE 1432nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 20 July 1995, at 10.05 a.m.

Chairman: Mr. AGUILAR URBINA

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of the United Kingdom of Great Britain and Northern Ireland (CCPR/C/95/Add.3)

1. At the invitation of the Chairman, Mr. Halliday, Mrs. Evans, Mr. Bramley, Ms. Spencer, Mr. Berman, Ms. Stewart, Mr. Barnard and Ms. Doherty (United Kingdom of Great Britain and Northern Ireland) took places at the Committee table.
2. The CHAIRMAN welcomed the delegation of the United Kingdom and remarked that Mrs. Higgins had long been a guiding light of the Human Rights Committee. Regrettably, the current session would be her last. He wished to thank her personally for teaching him how to be a member of the Committee; he well knew the esteem and affection in which she was held by all members of that body. Her election to the International Court of Justice (ICJ) was an honour to the Committee, especially so since, in the 50-year history of the United Nations, she would be the first woman to hold a judgeship on that Court.
3. Mr. HALLIDAY (United Kingdom) said that the fourth periodic report (CCPR/C/95/Add.3) was intended to be a factual account of measures adopted by the Government of the United Kingdom since the occasion of its previous appearance before the Committee in 1991 and of other key developments related to the exercise in that country of the rights recognized under the Covenant. It should perhaps be recalled that, while the United Kingdom was a unitary State, comprising England, Wales, Scotland and Northern Ireland, and the legal jurisdictions of the first two were different from those that existed in the second two, similar principles obtained throughout the United Kingdom. The report had endeavoured to provide an overview of the ways in which those principles applied in the various parts of the Kingdom, indicating as well where substantive differences arose in practice. He wished to note that the supplement to the fourth periodic report in respect of Hong Kong would be submitted the following day, while the report on the Crown dependencies and other dependent territories would be submitted at a later date. Since some time had elapsed since the submission of the United Kingdom report, a description of recent developments might prove useful to the Committee.
4. The Government's position in respect of Northern Ireland remained as set forth in the Joint Declaration issued by the Governments of the United Kingdom and Ireland at Downing Street on 15 December 1993, which was summarized in paragraphs 13-17 of the report. In February of the current year, the British and Irish Governments had published two documents entitled "Frameworks for the Future". Part I, "A Framework for Acceptable Government in Northern Ireland", set forth the views of the British Government with regard to the development of new democratic institutions in that country. Part II, "A New Framework for Agreement", which had been elaborated jointly by the British and Irish Governments, offered recommendations for the development of relationships on the island of Ireland and between those Governments. It also contained proposals for cross-border institutions with executive, harmonizing and consultative functions. Significantly, those papers contained proposals for

discussion, not conclusions. His Government firmly held that any eventual settlement would require agreement among the parties of Northern Ireland, the people of Northern Ireland (voting in a referendum) and the Westminster Parliament. The United Kingdom Government had invited the main constitutional parties to engage in a discussion with regard to those texts; discussion with some parties had begun.

5. On 31 August 1994, the Provisional Irish Republican Army (IRA) had announced a total cessation of hostilities. The Combined Loyalist Military Command had followed suit with a similar announcement on 14 October. The Government had then announced the start of a dialogue, with Sinn Fein and two loyalist parties, the Progressive Unionist Party and the Ulster Democratic Party, whose central purpose was to explore the basis on which those parties would come to play the same part as did the current constitutional parties in the public life of Northern Ireland, in accordance with their political mandates. Preparatory talks were currently being led by the Minister for Political Developments at the Northern Ireland Office. The Government's aim was to convoke an inclusive talks process, in which political parties would take part armed only with their electoral mandates. It had indicated to Sinn Fein as well as to the loyalist parties that they should not expect to participate in inclusive talks until substantial progress had been made on the decommissioning of illegally held arms and explosives.

6. Her Majesty's Government remained fully committed to seeking, through a process of political dialogue, a widely acceptable and comprehensive political accommodation encompassing the relationships within Northern Ireland, on the island of Ireland, and between the British and Irish Governments, and was working towards that end.

7. Furthermore, since the time of the previous report, public interest in the United Kingdom's human rights obligations as well as in its constitutional arrangements and developments had grown. The previous year had seen a lively debate on those issues in both Parliament and the media, in which senior judges, political parties and the Government had taken part. In addition, the significant number of submissions and reports from non-governmental organizations (NGOs) throughout the United Kingdom on the occasion of the preparation of the fourth report testified to the high level of importance attached to the protection of human rights in that country.

8. The draft Human Rights Bill had been introduced as a Private Members' Bill measure into Parliament in late 1994, and had been debated during the first half of 1995 in the House of Lords. Designed to incorporate the European Convention on Human Rights into British domestic legislation, the Bill had sparked considerable debate in Parliament, including among members of the senior judiciary. The Bill had not been supported by the Government, nor had it made progress in the House of Commons. The series of parliamentary debates to which it had given rise in the House of Lords had, however, shown the high level of interest accorded by British institutions to developing measures to protect human rights in the country, and had led the Government to review its relevant policies.

9. It had long been held in the United Kingdom that freedoms - which included those guaranteed by the Covenant and by the European Convention on

Human Rights - were naturally possessed by all members of society and need not be conferred. The United Kingdom enjoyed regular elections with full adult suffrage, parliamentary sovereignty, ministerial accountability, a free press and supervision by the courts of executive action by way of judicial review proceedings. That practice permitted executive action to be tested against broad principles of rationality, fairness, justice and legality, not themselves conferred by the Covenant or the Convention. In the view of the Government, the incorporation of those instruments was not a measure of the health of human rights in British society.

10. The British courts, demonstrating that they were indeed aware of that country's human rights obligations, increasingly referred to both the Covenant and the Convention in the course of their deliberations. The significance of that phenomenon could not be overestimated. The Government nevertheless continued to hold firmly to the position that those human rights obligations should not be incorporated into British law. The record indicated that in cases where they could duly invoke the terms of human rights instruments without trespassing on the legislative prerogative of Parliament, the courts had been scrupulous in so doing. Therefore, the fact that neither the Covenant nor the Convention were incorporated into domestic law did not preclude their use by the courts.

11. The practice of judicial review of executive action by the courts had likewise continued to evolve; recourse to that remedy was more widely available, and the necessary safeguards had been reinforced. The range of applicants who could apply for a judicial review had also been broadened; the courts could now entertain an application for review in cases of public interest in which no single individual was directly involved.

12. Efforts to strengthen the position of ethnic minorities and to eliminate all forms of racial and sexual discrimination had continued. It should be recalled that the United Kingdom's anti-discrimination legislation was among the most comprehensive of its kind in Europe. Proposals had been mooted for the introduction of race relations legislation into Northern Ireland. Many programmes had been launched to regenerate the economy, particularly in the inner cities. Criminal legislation addressing the problem of race-related crimes had recently been reviewed, resulting in the introduction of the offence of intentional harassment into the provisions of the Criminal Justice and Public Order Act 1994. That provision enhanced the ability of the police to deal with cases of serious harassment and prohibited the distribution of racially inflammatory material.

13. The Government was also endeavouring to establish a comprehensive ethnic monitoring system within the criminal justice system. Ethnic monitoring by the police of all arrests, cautions and criminal searches had begun, on a voluntary basis, on 1 April 1995; on 1 April 1996 it would become compulsory.

14. Furthermore, the Government was eager to encourage greater representation by ethnic minorities and women in public services as well as their appointment to public bodies. While efforts had been made to encourage the recruitment of ethnic minorities and women into, inter alia, the police and civil services, much progress remained to be made.

15. Significant improvements had been achieved in prison conditions in the United Kingdom: the housing of prisoners three to a cell had been eliminated and the housing of two to a cell had been halved. Eighty-two per cent now resided in uncrowded accommodation; more than 6,000 new places were planned. Ninety-five per cent of the prison population currently had access to sanitation facilities; 100 per cent was the goal. Prisoners could use card telephones in all establishments; their entitlement to receive visitors had doubled.

16. Other recent developments included the virtual elimination of sex-based discrimination from immigration controls; an enhanced right of appeal for asylum-seekers; greater transparency in the matter of setting life "tariffs" for convicted murderers; the imminent creation of the Criminal Complaints Review Commission (a new independent body for handling miscarriages of justice); and, in Northern Ireland, enhanced procedures for assessing complaints about the conduct of the military and the independent review of police detention centres.

17. Cases inevitably arose in which conflicting considerations required the Government to take difficult but vital decisions affecting the protection of rights. The Government sought, for example, to protect the right of assembly, but it also needed to ensure that those involved in lawful pursuits should not be disrupted. It sought to safeguard the right to privacy, but it also needed to ensure that children should be protected from those who might injure or abuse them. He expected that the dialogue would focus on such conflictual areas, as well as on constitutional issues. It was his hope that the Committee would bear in mind the broad spectrum of rights and freedoms enjoyed by the peoples of the United Kingdom. Finally, he assured the members of the Committee that its comments would be transmitted to the relevant ministers, and widely disseminated among the Government, the Parliament and the wider public.

18. Mr. BERMAN (United Kingdom) said that in the previous 10 years, the Covenant and the work of the Committee had grown steadily in their importance to the intergovernmental relations of the United Kingdom. He wished to assure the Committee that the British Government not only accorded considerable attention to the role of the Committee in receiving and considering the reports by the United Kingdom in respect of itself and its dependent territories, but also closely followed its consideration of the reports of other States parties.

19. It was a particular pleasure to be present at the last session to be graced by Mrs. Higgins. The United Kingdom had indeed taken pride in her membership on the Committee. Her tireless activities as a teacher, public lecturer and adviser had furthermore added greatly to the weight and respect that the Committee carried in that country. Her election the previous week to a seat on the ICJ by an overwhelming majority of States Members of the United Nations reflected the respect in which she was held. Her distinguished record of achievement had in fact been recognized by the Queen, who had bestowed upon her one of the United Kingdom's highest State honours. The United Kingdom intended to present a candidate for the election to fill the forthcoming vacancy on the Committee.

20. Finally, the Foreign and Commonwealth Office had deeply pondered the Committee's general comment 24 concerning issues related to reservations to the Covenant, and had conferred with colleagues in other States parties on that matter. While they gratefully acknowledged the serious and thoughtful attention drawn by the Committee to an undoubtedly serious problem, they disagreed with its conclusion. They were cautious with regard to the suggestion that the international regime governing treaty reservations was inappropriate for such human rights instruments as the Covenant, and with the conclusion that the Committee, despite the lack of a specific provision pertaining thereto, was open to replacing that legal regime with another. He nevertheless understood the general comment to be part and parcel of the Committee's dialogue with the State party, and consequently assumed that the Committee would be eager to hear its views. In that spirit, the British authorities had prepared a paper containing their observations, in accordance with article 40, paragraph 5, of the Covenant; that text would be provided to the Committee shortly.

21. The CHAIRMAN invited the United Kingdom delegation to respond to section I of the list of issues, which read:

"I. Constitutional and legal framework within which the Covenant is implemented; non-discrimination and equality of the sexes; and rights of persons belonging to minorities (arts. 2, 3 and 27)

(a) Has any consideration been given to incorporating the Covenant into domestic law and adopting a bill of rights pursuant to the undertaking of the delegation during the consideration of the third periodic report to review governmental policy in that regard in the light of the Committee's comments (see A/46/40, para. 357)?

(b) Has any further consideration been given by the Government to the possibility of reviewing its reservations to the Covenant and to withdrawing them?

(c) In view of the statement by the delegation during the consideration of the third periodic report that the Covenant differs from the European Convention on Human Rights in certain substantive respects and given the fact that most States parties to the European Convention on Human Rights are at the same time parties to the first Optional Protocol, does the Government envisage to ratify this Protocol in the near future or to provide other independent remedies in case of alleged violations of human rights?

(d) Have recent improvements of the situation in Northern Ireland created a better environment for the enjoyment of human rights and what are the prospects for further improvements?

(e) Please clarify whether the proposals from the Equal Opportunities Commission to strengthen legislation prohibiting discrimination between men and women, as referred to in paragraph 62 of the report, have led to the adoption of any specific measures or legislation.

(f) Please clarify why the only remaining sexually discriminatory provision of the Immigration Rules has not yet been repealed but is still on the books although not used in practice. Are the authorities barred from applying this provision (see para. 71 of the report)?

(g) Given the very few individual applications that were eventually settled by the Commission for Racial Equality, please elaborate on the effectiveness to date of the Commission in addressing problems connected with racial discrimination (see para. 33 of the report).

(h) Please comment on practical measures taken to ensure the effective enjoyment by persons belonging to minorities of their rights under article 27 of the Covenant, in particular in so far as the recognition of Celtic languages in Northern Ireland and Scotland and the promotion of regional cultures are concerned."

22. Mr. HALLIDAY (United Kingdom) responding to question (a), said that the Government had reviewed the arguments for and against the incorporation of the European Convention on Human Rights into British law in the context of the parliamentary debates surrounding the draft Human Rights Bill. The Government's position remained unchanged since the time of its last appearance before the Committee. In its view, incorporation of either the Covenant or a bill of rights into domestic law was neither necessary nor desirable. It was unnecessary to incorporate the Covenant because current constitutional arrangements already established individual rights and freedoms under the law. It was unnecessary to incorporate a bill of rights because such rights were already inherent in the United Kingdom's legal systems and were protected by them and by Parliament until the point where that body determined that the needs of society were such that they should be restricted in some way. Incorporation of either was considered undesirable because it would alter the long-established balance among Parliament, the executive and the courts, in which Parliament was primarily responsible for matters affecting the rights and duties of individuals. In the view of the British Government such a fundamental change to the United Kingdom's constitutional arrangements should be made only if and when a clear need arose and a national consensus emerged. Members of the Committee would surely recall that the United Kingdom had in 1966 accepted the right of individual petition under the European Convention on Human Rights as well as the jurisdiction of the European Court of Human Rights, and on those occasions when that body had determined that breaches of the Convention had occurred, steps had at once been taken to remedy the matter. Having reviewed the record of those countries that had incorporated the European Convention on Human Rights into their legal arrangements, the Government found no evidence to support the notion that such a step would provide greater safeguards for individuals. The provisions of the Covenant were admittedly broader in some respects than those of the Convention. However, in the context of a legal system that itself safeguarded rights and freedoms, the Government had deemed that the jurisdiction of the European Court of Human Rights provided sufficient additional safeguards.

23. Replying to question (b), he said that his Government kept its reservations to the Covenant under constant review to see whether it could withdraw any of them. It had, however, concluded that it was unable to do so for the time being.

24. Turning to question (c), he said that his Government had no plans to ratify the first Optional Protocol. The domestic courts in the United Kingdom continued to play an effective role as defenders of human rights and, as he had noted in his reply to question (a), the United Kingdom had accepted the right of individual petition under the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights since 1966. That system provided means of redress that were not available under the Covenant, since individuals had access to a compensatory mechanism and judgements were binding on the United Kingdom. Although the Covenant contained guarantees that were not covered by the European Convention, the Government did not consider them sufficient to justify ratifying the first Optional Protocol since they lent themselves more naturally to the type of scrutiny provided for by the current periodic review. There were also other independent remedies such as the Prisons Ombudsman in England and Wales, the Prisons Complaints Commissioner in Scotland and the Independent Assessor of Military Complaints Procedures and the Independent Commissioner for the Holding Centres in Northern Ireland.

25. In response to question (d), he said that the cease-fires in Northern Ireland had contributed greatly to restoring the basic human right to life. The reduced threat of violence had enabled the Government to take such practical measures as opening all border roads between Northern Ireland and the Republic of Ireland, reducing military patrolling and confining it mainly to rural areas where contact with the public was less likely, and withdrawing over 1,000 soldiers from Northern Ireland. Emergency powers were being used less and less frequently. Fewer people were being detained under the Prevention of Terrorism Act and fewer were being interviewed at the holding centres: 27 people in May 1995, compared with 154 a year earlier. Periods of detention were shorter: nobody had been held for more than 48 hours in May 1995, whereas 69 persons had been so held in May 1994.

26. In spite of the reduced use of emergency powers, terrorist organizations remained active, retaining large stocks of weapons and recruiting and training new members. Extremely vicious punishment beatings, robberies, threats and intimidation continued to occur.

27. The Government had always regarded the emergency legislation as a temporary measure, so that both the Prevention of Terrorism Act and the Emergency Provisions Act had to be renewed each year with the approval of Parliament after an independent review. As the threat of terrorism diminished, so also would the need for emergency legislation. The Government would not hesitate to suspend provisions for which powers were available as soon as the need for them disappeared. The independent reviewer in 1994, Mr. John Rowe QC, had recommended that the emergency legislation should be renewed for a further year. He would come back to that point in a reply under section II of the list of issues.

28. In March 1995, the Government had published a consultation paper entitled "Policing in the Community", which had sought views on the need for reform of the policing structures. The Government intended to bring forward firm proposals in the autumn in the light of the responses to the paper and the continuing dialogue between the police and the public in Northern Ireland.

29. With a view to reconciling the interests and traditions of all sections of the community in Northern Ireland, the Government was prepared to take further steps to consolidate the protection of rights, enhancing the credibility of local political institutions under any new system of devolved Government. The "Framework" documents reflected the Government's willingness to take such steps and its lack of preconceptions about which rights might require additional protection or how such protection might be provided. That subject remained open for discussion with the parties and between the two Governments as part of the political process described in his initial statement.

30. In reply to question (e), he said that the Government had taken action on the proposals of the Equal Opportunities Commission. With a view to reducing delays in procedures to achieve equal pay for work of equal value, steps had been taken to speed up the preparation of the expert's report used in those procedures, to allow tribunals to exercise discretion in calling for such reports, to reduce delays resulting from one of the defences available under the procedures and to abolish the "no reasonable grounds" test.

31. Turning to question (f), he said that no suitable opportunity had yet been found to repeal the sexually discriminatory provision under section 5 of the Immigration Act 1971, but the authorities had not been applying it as a matter of policy.

32. On question (g), he pointed out that the Commission for Racial Equality did not itself have authority to settle cases. Paragraph 33 of the report referred to instances in which the Commission was assisting a party in a case in which both parties ultimately agreed to settle. The Commission could not act in place of a solicitor or barrister in court but could appear at industrial tribunals on behalf of complainants. It had separate powers to initiate proceedings under the race relations legislation in cases where it considered that persons were engaging improperly in discriminatory practices. The number of applications registered with the Commission and the level of assistance provided were not to be regarded as the only data by which to judge the effectiveness of its work. The Government believed that the Commission was highly effective in its threefold duty of working towards the elimination of racial discrimination, promoting equality of opportunity and good race relations, and keeping the Race Relations Act under review.

33. In response to question (h), he said that it was a fundamental objective of his Government to enable members of minority communities to participate fully in the life of the nation, which had shown itself capable of accommodating a variety of religions and cultures while preserving the established framework of values cherished in the United Kingdom. The Government's funding of the Arts Councils helped to develop and increase access to culturally diverse arts.

34. With regard to Celtic languages, the Irish-language movement in Northern Ireland had grown in significance in recent years. The Government had offered financial support amounting to £2 million in 1994-1995 to projects with an Irish-language dimension. Since May 1995, legislation banning street nameplates in languages other than in English had been repealed. The Irish language was taught in many schools with State financial assistance and in recent years groups of parents had established independent schools teaching entirely through the medium of Irish. Three of those, at primary level, had been accepted for full grant aid. An Irish-medium secondary school in Belfast, although too small for full grant aid, had been awarded special financial assistance of £100,000 a year for a two-year period.

35. In Scotland, support for the Gaelic language centred on three main areas: support amounting to £8.9 million had been allocated in the current financial year for the production and transmission of some 170 hours of television programmes in the Gaelic language; grants of £1.9 million had been allocated for education through the medium of Gaelic; and £0.5 million had been allocated to groups working with the Gaelic community on projects designed to promote the language and culture.

36. The CHAIRMAN invited the members of the Committee who so wished to put additional questions, in the light of the replies by the delegation of the United Kingdom to section I of the list of issues.

37. Mrs. CHANET thanked the delegation for allowing the Committee to take advantage of the extremely valuable services of Mrs. Higgins for so many years. It was particularly pleasing to learn of the election to the ICJ of a member of the Committee, a woman and a European.

38. Although the report had been submitted on time and had sought to clarify a rather complex situation in terms of legal structures, she was disappointed to note that little progress had been made on the first three questions on the list of issues, which had been raised quite emphatically in 1991 by almost all members of the Committee.

39. With regard to the question of a bill of rights, Mr. Halliday acknowledged that an attempt to have the European Convention on Human Rights incorporated into domestic legislation had been opposed by the Government of the United Kingdom. What exactly were the obstacles and complexities to which the Government referred? Were they the same as those impeding its incorporation of the Covenant?

40. Nor was there anything new on the subject of reservations. The Committee's observations in general comment 24 to the effect that human rights treaties were different from treaties between States and that a large number of reservations tended to undermine the effective implementation of the Covenant were matters of common sense and did not require complex legal analysis. In three of its long list of reservations, those concerning articles 12, paragraph 4, and 24, paragraph 3, and that concerning military discipline, the United Kingdom had reserved the right to derogate "from time to time". Such vague wording with respect to restrictions of rights was manifestly a source of legal insecurity.

41. How could the United Kingdom maintain that there was nothing to gain from ratifying the first Optional Protocol when it admitted that there were guarantees in the Covenant that did not exist in the European Convention on Human Rights? Perhaps the authorities felt that they already had enough difficulties addressing individual petitions under the Convention without dealing with additional individual complaints under the Covenant.

42. With regard to the right to self-determination, she asked whether human rights aspects formed part of the current negotiations on a political settlement in Northern Ireland, for example the proposed review of the two pieces of emergency legislation. The Government had announced the setting up of an independent commission on the subject. How would the members of that commission be chosen? Were the questions of equality of opportunity and political and religious discrimination in employment and other areas in Northern Ireland being discussed in the context of the negotiations?

43. Mr. LALLAH joined in congratulating Mrs. Higgins on her election and paid tribute to her contribution not only to the work of the Committee but also to human rights and international law in general.

44. Although he had been encouraged to hear in the delegation's opening statement of the progress achieved in a number of areas, he was greatly disappointed at the manner in which the last dialogue had been treated. He drew particular attention to paragraphs 20, 23 and 27 of summary record CCPR/C/SR.1045 concerning the third periodic report.

45. He was not at all impressed by the reasons given for non-incorporation of the Covenant in the domestic legislation of the United Kingdom and was perplexed by the Government's attitude to the first Optional Protocol. He was disturbed at the failure to take account of article 2, paragraphs 3 (a) and (b), of the Covenant. It was not only a matter of people being aware of human rights through discussions in the House of Lords, the media and NGOs. What was at stake was the availability of remedies for citizens of the United Kingdom whose rights were recognized under the Covenant.

46. With regard to article 9, paragraph 4, for example, he had it on good authority that where a person was detained in immigration cases there was no access to a court nor was there a right to have a decision of the immigration authorities reviewed by a court.

47. With respect to articles 7 and 10, paragraph 1, he asked whether common law recognized the right not to be subjected to cruel, inhuman or degrading treatment or punishment, a right that was not included in the European Convention on Human Rights. Did a person have to sustain some kind of physical injury before a remedy became available in such cases?

48. Turning to article 14, paragraph 5, concerning the right to have a conviction and sentence reviewed by a higher tribunal according to law, he asked what was the judicial authority that had a right to review such sentences as the mandatory death sentence and detention during Her Majesty's pleasure. He gathered that it was the Executive that had the final say.

49. With regard to articles 17 and 23 on privacy and the family, he had information to the effect that an alien parent who was forced to leave the country did not have absolute access to a child remaining in the United Kingdom. Apparently the right to privacy was not secure under common law. He had heard of a television actor whose privacy had been violated and who had had no remedy whatsoever.

50. Under article 26 of the Covenant, States parties were obliged in their executive, legislative and judicial behaviour to treat all persons equally; he found it inadmissible that the report accorded just one sentence specifically to such a vitally important provision. In Northern Ireland, particularly, there had to be a public perception, despite the ongoing restrictions, that the attitude of the authorities met that basic standard of equality before the law. To give just two examples, the authorities' failure to publish the findings of the Stalker Inquiry, and the handling of the Clegg case, where a sentence found to be perfectly justified by the highest judicial tribunal had been changed by decision of the executive, were, to say the least, of little service to that perception.

51. He commended to the attention of the United Kingdom delegation the Committee's general comment 23, on article 27 and the right of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion and to use their own language. He was by no means certain that the very many such minorities in the United Kingdom, and notably Gypsies and immigrants from Asia and elsewhere, were able fully to enjoy those rights or that the benefits accorded by the State - for example the grants to schools for linguistic purposes mentioned by Mr. Halliday - were equitably distributed. A frank explanation by the delegation of any difficulties encountered would at least help to advance the dialogue.

52. One of the most compelling reasons in favour of a Bill of Rights was to be found in the obligations set forth in article 2, paragraph 3, of the Covenant. He could not agree that accession to the European Convention on Human Rights and acceptance of the jurisdiction of the European Court took care of virtually all the undertakings entered into under the Covenant. Nor did he by any means share the scepticism of the United Kingdom Government, reflected in paragraph 6 of the report, as to whether ratification of the Optional Protocol would "significantly" enhance the protection of individuals under the United Kingdom's jurisdiction. He and the other members of the Committee wished very much to demonstrate the opposite. As to the remark that the European Convention was better known in the United Kingdom than the Covenant, was that not simply because the Government was more committed in its support for the former?

53. Notwithstanding his critical remarks, he believed that the Committee undoubtedly had a great deal to learn from judicial thinking in the United Kingdom. The elaboration of a proper Bill of Rights, or at least the opportunity and means of considering and discussing the reasoning behind court decisions, would make that learning process much easier.

54. Mr. MAVROMMATIS joined in the tributes paid to the contribution made by Mrs. Higgins to the Committee's work, notably under the Optional Protocol. It was a compliment to the Committee that her country had nominated a person of such calibre to its ranks.

55. In the present troubled times, countries such as the United Kingdom which had neither a written constitution nor a bill of rights and in which there was no automatic incorporation of the provisions of international treaties into domestic law needed as many individual petition mechanisms as possible. He was especially puzzled by the United Kingdom's enthusiasm, on the one hand, for the restructuring of such mechanisms under the European Convention and its reluctance, on the other hand, to accede to the Optional Protocol of the International Covenant.

56. The United Kingdom, as a permanent member of the United Nations Security Council and in other roles, such as that of guarantor in Cyprus, was playing an important and constructive part in the quest for solutions to regional problems. That being so, it was greatly to be hoped that events in Northern Ireland, which had undoubtedly taken a better turn of late, would prove lastingly positive. Any action that might cast doubts on the credibility of the peace process, or even place it in jeopardy, should be avoided. The release of a convicted murderer already referred to; shortcomings in the investigation of such crimes as the murder of the solicitor, Mr. Finucane; and the failure to set in place a proper mechanism for handling complaints were undoubtedly prejudicial to that cause. The people must be convinced that effective guarantees existed against exceptional procedures leading to unsatisfactory results.

57. Ms. EVATT observed that there was much to admire and be thankful for in the democratic institutions and legal system of the United Kingdom: a country that produced the likes of Mrs. Higgins could not be praised too highly. That being said, the greater the expectations vested in those institutions and that system, the greater the disappointment - and indeed anger - when they were found wanting.

58. In her view, many of the controversial issues that would be alluded to in one form or another during the coming discussion could have been avoided if there were effective legal protection of rights under the Covenant in the United Kingdom.

59. She was especially concerned at the persistent claim that the possession of rights and freedom was inherent in United Kingdom society and could only be restricted by a democratic decision of Parliament, whose role was confined to considering the possible need for limitations. The assumption that the rights and freedoms recognized in the Covenant were inherent in common law and that Parliament had no role in conferring such rights and freedoms did not stand scrutiny: their existence depended in very great measure on statutory law, and she cited the equality of women, the rights of children, complaints against the police, the institution of the ombudsman, and the issues of prisoners' and trade union rights as instances. But there were also areas where statutory law was inadequate to provide the remedies needed, for example in cases of discrimination on grounds of race or gender or the miscarriage of

justice or, conversely, where statutory law had encroached on freedoms, by setting limitations to a fair trial, the freedom of speech, the rights of detainees, impunity and so on, overturning in the process another assumption, namely that without any restraint in its powers, Parliament would always refrain from infringing or removing people's rights.

60. Her regretful conclusion was that, where neither the common law nor statute provided for a right, there was no right; and that where statutes removed or limited rights, there were in many cases no remedies outside those provided by the European Convention. It was her understanding that most of the cases taken to the European Court of Human Rights did in fact involve alleged violation of the International Covenant by legislation, over which the principles of legality, fairness and natural justice could not prevail. Her misgivings on that score were reinforced by the absence of any mechanism within the parliamentary system itself to examine rigorously and reject proposed laws which might encroach on rights. If Parliament could not accept that challenge, then the balance between Parliament and the courts might need to be changed.

61. She invited the United Kingdom delegation to consider, as each issue was raised by members of the Committee, whether the United Kingdom might not avoid the risk of violating the standards to which it was obviously committed and whether it would not better fulfil its obligations under the Covenant if the courts were empowered to determine whether laws and policies met international standards.

62. Concerning the dialogue on Northern Ireland and article 25 of the Covenant, she asked to what extent current arrangements actually ensured that the parties to the negotiations represented and reflected all the different elements of society, including minorities, and - consequently - that the different views of each segment of the community were given proper weight.

63. The projected referendum would be a particularly important act of autonomy and self-determination, provided that it did not take place at the expense of human rights. She inquired how the same principle would be applied, mutatis mutandis, in response to Scottish and Welsh aspirations.

64. Lastly, she asked whether the United Kingdom report to the Committee and the record of the discussions would be widely distributed in the United Kingdom.

65. Mr. BÂN voiced pleasure at the distinction conferred on Mrs. Higgins and sadness at the prospect of her departure. The ICJ's gain was certainly the Committee's loss.

66. He commended the report as a frank, informative and in many respects convincing document. On the other hand, he had found little direct sign, either in the report itself or in the oral introduction, of the promised response to critical remarks by the Committee during the discussion of its predecessor. Indeed, an analytical comparison made by the Secretariat of the contents of the third and fourth periodic reports showed that in many instances the latter was silent on points raised in the former or in the ensuing discussion. Against that background, he was somewhat sceptical about

the assurances given in paragraph 8 of the document under consideration that the report itself and the proceedings in the Committee would be given wide publicity in the United Kingdom.

67. A broad range of submissions claiming violations of rights under the Covenant had been received by the Committee from active and responsible NGOs. He asked whether those bodies had been consulted or their experience referred to in the course of preparing the periodic report. At all events, that should be the case in future.

68. Addressing in some detail the reservations made by the United Kingdom with respect to the Covenant, he said that the withdrawal of the reservation to article 25 was to be welcomed. He asked whether the changes in the Immigration Rules announced in paragraph 404 of the report had come into force; and, if so, whether the reservation concerning the first sentence of article 23, paragraph 4, was still necessary; similarly, he wondered whether the appreciable improvements reported in prison conditions did not render obsolescent the reservation in respect of article 10, paragraphs 2 (b) and 3.

69. Mr. KLEIN said that he would miss Mrs. Higgins, both as a patient mentor in his efforts to familiarize himself with the Committee's workings and as a most agreeable neighbour at the Committee table.

70. Concurring with much of what had already been said on the United Kingdom report, he stressed that failure to incorporate treaty provisions into domestic law and to accede to the Optional Protocol were detrimental to the whole understanding of human rights in the United Kingdom. Scant attention by the Government to the Covenant, except for the purposes of inter-State relations, would mean that it slipped from public view and - more significantly - from the attention of judges, lawyers and all responsible for the application of the law.

71. Conversely, action by the United Kingdom to make good those two basic omissions, which were all the more deplorable given that country's historical record with regard to the international development of human rights, would contribute much to the achievement of a broader common basis with regard to respect for human rights throughout Europe and more particularly within the European Union.

72. Concerning Northern Ireland, he first noted with satisfaction the improvement of the situation and then suggested that present circumstances appeared to justify the most generous possible application of the principle of proportionality in the imposition and implementation of emergency measures. He noted with particular satisfaction the contents of paragraph 17 of the report, especially the acknowledgement of the right to self-determination, and inquired about the attitude of the authorities concerning claims relating to that right emanating from other parts of the United Kingdom.

73. Mr. EL SHAFEI joined in congratulating Mrs. Higgins on her well-deserved election; the Committee would no doubt have the opportunity to express its pride and to place on record its appreciation of her valuable services. Concerning the United Kingdom report, he observed that many important points had already been made. He would not repeat them, but merely say that he

looked forward to the delegation's replies on the matter of the constitutional and legal status of the Covenant, the issue of reservations, and questions relating to the application of articles 1 and 25 in other parts of the United Kingdom as well as Northern Ireland.

74. In relation to minorities and article 26 of the Covenant, he remarked that almost 20 years had passed since the adoption of the 1976 Race Relations Act by the British Parliament. Yet levels of discrimination remained alarmingly high, while ethnic minorities figured prominently among the disadvantaged segments of the population in countless respects. In one way or another, they continued to face harassment, abuse and physical violence, while the police not only failed to provide sufficient protection but were themselves also guilty on occasion of subjecting members of those minorities to racist, arbitrary and discriminatory practices and treatment.

75. Amnesty International had documented allegations of cruel, inhuman or degrading treatment during the forcible deportation of asylum-seekers and immigrants. Concerns had been expressed about the accountability of immigration officials and the increasing use of private security firms to carry out forcible deportations. Ethnic minorities were not fairly represented in government or in many of the professions. The Race Relations Act 1976 did not provide sufficient protection for minorities in the United Kingdom. In 1991, the Commission established by that Act had reported continuing evidence of widespread discrimination on racial grounds, which exposed the complacency of those who contended that the Act was fulfilling its intentions; the Commission stressed that a stronger legal framework was needed. He wondered whether the delegation really believed that in the light of such conditions the situation did not require more updated legislation to give effect to the human rights guarantees contained in the Covenant under articles 2, 3, 26 and 27. In view of the absence of legislation outlawing discrimination on grounds of race in Northern Ireland, did the delegation believe that the introduction of anti-discrimination legislation there was an urgent matter? Did the Government of the United Kingdom intend to introduce such legislation, and if so what would be the time-scale and what would be its substance?

76. Mr. FRANCIS fully supported Mr. Lallah's contention that article 2 of the Covenant would be the testing ground for the United Kingdom with regard to compatibility with the requirements of the Covenant, but in his view another testing ground would be certain aspects of its treatment of minorities and prisoners. With regard to article 2, he said that the authorities in the United Kingdom had in recent years been discriminating against targeted groups of people from Africa, people of Afro-Caribbean origin and other minority groups, especially with respect to the practice of "stop and search"; according to one academic study, 42 per cent of people who were stopped and searched in the United Kingdom were from those three groups.

77. He then referred to the specific case of a black prison auxiliary in Brixton called Claud Johnson, who, according to the Commission for Racial Equality, had been subjected to ostracism and exclusion for three years because he had had the courage to report to the authorities that he had seen five prison officials beating a black man. The Commission for Racial Equality had taken up the matter without receiving any satisfaction from the prison

authorities, and the man had been awarded £28,000 for aggravated damages and wounded feelings. Such issues were very serious because if only the Government of the United Kingdom could improve its record in that area and proceed with the adoption of a bill of rights, it would have achieved a position of some distinction in the area of human rights.

78. Another serious incident which marred the image of the United Kingdom with regard to its treatment of minorities, whether on the basis of colour or otherwise, was that of Joy Gardner. In enforcing her return to Jamaica, police had visited her residence and arrested her in circumstances which had led in a very short period to her death. From all the available evidence it seemed that the four and a half yards of tape they had used to gag her and prevent her biting the police officers, and which had caused her to die of suffocation, had been excessive. The persons charged had not been convicted and, according to a newspaper report, would not be disciplined. He wished to know what steps were being taken in the United Kingdom to avoid a recurrence of incidents like the two he had mentioned.

79. Mrs. MEDINA QUIROGA congratulated Mrs. Higgins on her appointment but said she was sad that her colleague would be leaving the Committee just as she herself had arrived; she had been hoping to learn a great deal from Mrs. Higgins.

80. As for the report of the United Kingdom, and the delegation's replies to the Committee's questions, she associated herself with what Ms. Evatt had said regarding the situation in Scotland, and wished to ask if the Government of the United Kingdom had a different position with regard to Scotland and article 1, and if so what were the reasons.

81. Mr. Halliday had said that incorporation of the Covenant in domestic legislation in the United Kingdom was neither necessary nor desirable, but in her view it was clearly necessary: one case with which she was familiar had demonstrated that the right to privacy was not established in United Kingdom legislation, and another had shown that discrimination as set forth in the Covenant was not prohibited.

82. The Committee had been told that the European Convention on Human Rights and the Covenant had often been used by the courts, but a study conducted by the Democratic Audit of the United Kingdom had found only 173 cases in England between 1972 and 1993 in which the European Convention on Human Rights had been cited either in the judgement or by counsel in pleadings. That represented only 0.2 per cent of all cases. A sample of 64 cases had been analysed in greater detail; it revealed that in only 27 of them - out of a total number of cases of 91,000 over the 21-year period - had the Convention had any impact on the case. In 11 of them it had been used to bolster the reasoning of judges and in 13 it had arguably influenced the majority judgement; 18 of the 27 cases had concerned freedom of expression, in which the legislation was in any event similar in the United Kingdom to that in the Convention. In only three cases could the Convention be said to have affected the outcome. Similar research had been conducted with regard to the Covenant; revealing that it had been referred to in only 10 cases - 0.01 per cent of the total - five of which had involved the payment of compensation with regard to miscarriages of justice following statements by the Home Secretary.

In her view it was evident that incorporation was necessary. As for its desirability, the citizens of the United Kingdom presumably wanted greater safeguards for their human rights, and she therefore concluded, that desirability was being considered from the point of view of the Government. Moreover, the fact that Parliament in the United Kingdom could take away people's rights also placed human rights in a precarious position which was alien to their very nature.

83. There was almost no mention in the report of domestic violence and rape, upon which she had received a great deal of material; she requested more information from the delegation. She associated herself with the concerns expressed about Northern Ireland, notably by Mrs. Chanet and Mr. Klein, and asked why, in view of the 10-month truce in the province, emergency legislation was still in force and the human rights situation there had not improved.

84. Mr. POCAR said he had joined the Committee at the same time as Mrs. Higgins and had seen her prodigious contribution to its jurisprudence and procedures over the past 10 years. She was always ready to assist her colleagues, and her departure would be a great loss; however, the Committee had been fortunate in having her as a member, and was proud that she had been chosen to sit in the main international legal body.

85. As for the report of the United Kingdom, he said he was not convinced by Mr. Halliday's reasons for not incorporating the Covenant into domestic legislation and for not ratifying the Optional Protocol. Non-incorporation did not prevent courts from referring to international legal instruments on human rights, and the report gave examples of court decisions in which the European Convention on Human Rights had been reflected. He wondered to what extent that was a consequence of the fact that further international scrutiny of the application of the provisions of the European Convention was available to individuals in the United Kingdom. No example was given in the report of decisions in which the Covenant had been reflected. In other words, non-incorporation might not be an obstacle to reference by the courts to international human rights instruments, but the availability of access to additional means of redress at the international level provided for additional safeguards for an individual's human rights. That was also the view of the Government of the United Kingdom, as reflected in the report, and he perceived a contradiction in the reasoning followed in the report with regard to the Optional Protocol. On the one hand, it was recognized that the procedures under the European Convention on Human Rights provided for additional safeguards; on the other hand, the report and the delegation had stated that the procedure under the Optional Protocol would not significantly enhance the protection of individual human rights. The two instruments did not cover precisely the same area, indeed contained important differences, and it was difficult to accept that accession to the Optional Protocol would not provide for additional safeguards which would in fact, in his view, represent an important enhancement of the protection of individual rights. Article 26 of the Covenant provided for the independent right to equality before the law and equal protection of the law, and that was not provided for in the European Convention on Human Rights. That right was fully recognized in the established tradition of the common law in the United Kingdom, as stated in

paragraph 483 of the report, but its application would certainly benefit from the additional scrutiny available to individuals under the Optional Protocol, as had been the case in a number of other European countries.

86. He agreed with Mr. Lallah that it was not acceptable that the report, which was in many respects a very good one, should devote only a few lines to article 26. That was an important article which had been ignored altogether in the third periodic report. In fact, some paragraphs did refer to the area covered by article 26, such as discrimination in employment which had been referred to under article 2. He would welcome an explanation from the delegation as to why article 26 was constantly disregarded in United Kingdom reports.

87. Mr. BUERGENTHAL said he was sad that Mrs. Higgins was leaving the Committee, but was sure she would bring a welcome breath of fresh air to the ICJ. He congratulated the Government of the United Kingdom on its good judgement in nominating her.

88. As for the report of the United Kingdom, he shared many of the criticisms expressed by other members of the Committee. However, it had to be recognized that there were important and valuable human rights safeguards in the United Kingdom, and new legislation had indicated a continuing effort to improve them; there was a natural tendency for the Committee to focus on negative aspects, and to take positive ones for granted.

89. During a recent visit to the United Kingdom, he had been dismayed to read in the press of a statement made by the Metropolitan Police Commissioner to the effect that black youths as a group accounted for the majority of crime in London. The Commissioner had been strongly supported in that regard by the Home Secretary. He (Mr. Buerghenthal) considered that such statements by government officials, especially if they were capable of being misunderstood or distorted, did not contribute to the creation of a climate of racial harmony in a multiracial State, and he wondered what efforts the Government and the local authorities were making to ensure that such statements did not result in future police measures against minority groups based on what were unjustified presumptions that, for example, young blacks were *prima facie* suspects.

90. As for non-incorporation of the Covenant and non-ratification of the Optional Protocol, he wished to point out that he had always opposed the position of the Government of the United States in respect of its own failure to ratify the Optional Protocol. In the case of the United Kingdom, it was important not to divorce non-incorporation of the Covenant from the European Convention on Human Rights. The fact was that the United Kingdom had lost many cases in the European Court of Human Rights, largely because neither the European Convention nor the Covenant created the formal cause of action in the United Kingdom, although, of course, cases could be cited. For every one of the cases the United Kingdom had lost in the European Court there had been many earlier victims of the same objectionable legislation or government action who had not appealed to the European Court and consequently remained without remedy but who might have had redress if the courts had had the

opportunity to apply the Convention in the first place. What happened to such prior victims, and was any thought being given to retroactive legislation in such cases?

91. Mr. PRADO VALLEJO said he was very sad that Mrs. Higgins would be leaving the Committee. He had a degree of responsibility for her departure since Ecuador had been one of the first countries to support her nomination to the ICJ.

92. As for the report of the United Kingdom, he was concerned that the Government never seemed to take up any of the comments made by the Committee. Some 22 European countries had now ratified the Optional Protocol, but the Government of the United Kingdom always gave the Committee the same reasons for not doing so and for not incorporating the Covenant into domestic legislation. He had reason to believe that the report had not been made available to NGOs for comment, and he wondered why that had not been done, and what restrictions had been placed on its publication.

93. Legislation on freedom of religious belief was not applied throughout the United Kingdom, notably with regard to employment and notably in Northern Ireland; he sought clarification from the delegation regarding discrimination on grounds of religious belief. There had also been recent examples of restrictions being placed on the family life of Gypsies, who had complained that their cultural life was in jeopardy as a result. Article 2 stated that the rights recognized in the Covenant were to be respected and ensured to all individuals within the territory of the State party and subject to its jurisdiction without distinction of any kind, but refugees did not in the United Kingdom have the same right of recourse to the courts, and the conditions in the detention centres where they were held pending decisions regarding applications for asylum were very degrading. They had no right of appeal. He requested clarification from the United Kingdom delegation regarding the rights of refugees.

The meeting rose at 1 p.m.



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HUMAN RIGHTS COMMITTEE

Fifty-fourth session

SUMMARY RECORD OF THE 1433rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 20 July 1995, at 3 p.m.

Chairman: Mr. AGUILAR URBINA

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GE.95-17691 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of the United Kingdom of Great Britain and Northern Ireland (CCPR/C/95/Add.3; HRI/CORE/1/Add.5/Rev.1; M/CCPR/C/54/LST/UK/4) (continued)

1. The CHAIRMAN invited the Committee to continue consideration of the fourth periodic report of the United Kingdom of Great Britain and Northern Ireland and to raise any questions concerning which they still needed clarification after hearing the United Kingdom delegation's replies to the written questions in section I of the list of issues (M/CCPR/C/54/LST/UK/4).
2. Mr. KRETZMER said that he would first like to ask about the proclamation of the state of emergency in Northern Ireland and the measures relating thereto. The fourth periodic report of the United Kingdom and the information provided by non-governmental organizations appeared to indicate that the proclamation of the state of emergency and the relevant legislation were themselves part of the problem of Northern Ireland. That being the case, why was the United Kingdom Government not considering dropping those measures in the framework of the process currently taking place, which should lead to a political settlement in Northern Ireland? His second subject of concern was the problem of equality and non-discrimination. Some members of the Committee had observed that the report did not have much to say about article 26 of the Covenant. However, the report's treatment of articles 2 (paras. 18 to 56) and 25 (paras. 441 to 482) was very revealing on the subject. While it was true that the report contained some positive elements in that respect, there were also some fairly disturbing ones.
3. Mr. Lallah had referred to the problem of attitudes and perceptions, which was particularly difficult in the law enforcement context. According to the report, 5.5 per cent of the inhabitants of the United Kingdom appeared to belong to ethnic minorities, but in the prison population that proportion was 12 per cent for men and 14 per cent for women. On the other hand, members of ethnic minorities accounted for 1.5 per cent of police personnel, and they were employed only in middle and lower-level posts. He drew the State party's attention to the Committee's general comment 18 (on non-discrimination), on which States parties were asked to take measures to ensure equality of rights in practice. According to information available to the members of the Committee, members of ethnic minorities who had joined the police force appeared to have been the target of racist attitudes on the part of their colleagues and, in May 1993, an industrial tribunal had awarded £25,000 in damages to a police officer who had been the victim of 42 incidents involving discrimination or harassment by a total of 60 of his colleagues. He would like to know what measures were being taken to increase the number of police officers belonging to ethnic minorities, especially in middle and higher-level posts, and to create conditions such that when members of ethnic minorities joined the police, they would not be the victims of racist practices by some of their colleagues.

4. Mr. ANDO said he wished to express satisfaction at the recent turn of events in Northern Ireland, to which the United Kingdom delegation had made reference in its preliminary statement.

5. His remarks would relate to the reservations entered by the United Kingdom when it had ratified the Covenant, which he would be tempted to describe as "umbrella reservations" or "framework reservations". That applied, for example, to the second reservation entered by the United Kingdom upon ratification (CCPR/C/2/Rev.4, p. 38), according to which the Government of the United Kingdom reserved the right to apply to members of, and persons serving with, the armed forces of the Crown and to persons lawfully detained in penal establishments of whatever character such laws and procedures as they might from time to time deem to be necessary for the preservation of service and custodial discipline. That clause appeared to be too broad, and its consequences could not really be gauged. The same was true of immigration procedures.

6. The Government of the United Kingdom had entered six reservations relating to various articles of the Covenant. With regard to the reservation to article 10, paragraph 3, concerning prison conditions, he endorsed Mr. Bán's remarks. Regarding Jersey, a reservation had been entered in respect of article 11, which concerned imprisonment for non-fulfilment of a contractual obligation. The reservation concerning implementation of article 14, paragraph 3 (d), on the guarantee of free legal assistance to everyone charged with a criminal offence, applied to certain dependent territories, but it was none the less a reservation. And the Government of the United Kingdom reserved to itself the right to defer implementation of article 23, paragraph 3, with regard to a small number of customary marriages celebrated in the Solomon Islands. He was well aware of the difficulties involved in making the rights and traditions of indigenous peoples compatible with international standards, but in view of the fact that it was simply a question of "deferring" the implementation of that provision of the Covenant, he would like to know whether there had been any change in the situation.

7. The United Kingdom delegation had explained that the Government's position on reservations was considerably different from that of the Committee. The Vienna Convention on the Law of Treaties laid down the rule of compatibility of the reservation with the goals and objectives of the treaty, which was for each State party to determine. However, that applied to ordinary treaties, i.e. those governing relations between States, on the basis of reciprocity. Human rights treaties and conventions, on the other hand, were commitments made by the State party to treat everyone under its jurisdiction - nationals or foreigners - in conformity with certain international standards, which were in many cases minimum requirements of international society. In addition, the Committee based itself on the assumption that the State party's commitment was not so much towards other States parties as towards its own inhabitants. On that question, he awaited with interest the written document explaining the position of the United Kingdom Government regarding reservations to human rights treaties.

8. Mr. BHAGWATI said that he was not fully convinced by the arguments put forward in the United Kingdom report in support of the view that the incorporation of the provisions of the Covenant into domestic law was not

necessary to ensure that the State party's obligations under that instrument were reflected in the deliberations of Government and of the courts (CCPR/C/95/Add.3, para. 5). In his view, the rights set forth in the Covenant must be included in United Kingdom domestic law in order to be implemented by United Kingdom courts and invoked by individuals whose rights had been violated. In the common-law tradition, judges had used the procedure of recognition to develop a series of new individual rights, while taking care not to establish new legislation. But the power of the common-law system to guarantee the various aspects of a broad spectrum of human rights had its limits. His question was therefore the following: could it be stated that all the rights set forth in the Covenant were already covered by common law? Mr. Lallah had provided several examples demonstrating the contrary, which tended to prove that it was necessary to incorporate certain rights into domestic legislation.

9. Moreover, protection of the rights set forth in the Covenant could not be dependent on the opinion of a simple majority in Parliament; it must receive more durable support, which could only be given by incorporating those rights into domestic law. The United Kingdom argued that individuals whose human rights had been violated could turn to the European Court of Human Rights, but that was a lengthy, difficult and costly procedure.

10. Like other members of the Committee, he believed it was important that the periodic reports which the United Kingdom submitted to the Committee should be made available to the public; they should be made available to non-governmental organizations in particular, in order to help for them to contribute to the dialogue between the Government and the Committee by providing the Committee with information in writing.

11. Lastly, he was disturbed at the resurgence of racially-motivated crimes and assaults in recent years and would like to know what measures the Government had taken in that connection. He was surprised that, despite inquiries into certain murders and assassinations perpetrated by armed supporters of the "loyalists" in Northern Ireland, no suspects had yet been prosecuted. That was a problem which the Government of the United Kingdom should look into.

12. Mr. BRUNI CELLI noted a positive development in paragraph 8 of the report (CCPR/C/95/Add.3), in which the Government announced that it intended to make the text of the report and the summary record of the oral examination by the Committee widely available, and that copies of both would be placed in the Libraries of both Houses of Parliament and made freely available to anyone who wished to receive a copy.

13. He endorsed the remarks of other members of the Committee concerning the incorporation of the provisions of the Covenant into domestic law and the ratification of the Optional Protocol. He wished to refer to the issue of the teaching of languages other than English in the United Kingdom, which the report dealt with under article 27. He noted with satisfaction what was being done in Wales in support of the Welsh language, notably through television programmes in Welsh, for which the Government provided an annual subsidy of about £55 million and which accounted for an average of 104 hours a week of BBC broadcasting. The promotion of the Gaelic language in Scotland also

received subsidies of £8.7 million a year. That being the case, he was surprised not to find any information about an equivalent policy of support for the Irish language. Was that indicative of discrimination connected with the current conflict?

14. Mr. HALLIDAY (United Kingdom) said that there was undeniably a fundamental difference between the position of his Government on the incorporation of the provisions of the Covenant into domestic legislation and that of the Committee, which attached more importance to the practical advantages of incorporation. The main problem lay in the conception of common law in the United Kingdom. In that connection he cited the statement in which a member of the House of Lords had in January 1995 expressed pride in the conception of human rights in the United Kingdom, which was different from that of many other countries. That difference related to the fact that citizens did not have to identify any right in order to justify their conduct; the emphasis was rather on freedom, citizens having complete freedom of conduct unless restrained by law. It was for an individual who considered that his rights had been violated by someone else's behaviour to invoke the law that imposed restrictions on that freedom. British citizens did not need to have their rights and freedoms listed, since they had them in any case.

15. Some members of the Committee had dwelt on the statistics relating to cases involving the United Kingdom which had been dealt with by the institutions established under the European Convention on Human Rights. In order to get a clear idea of the situation, however, it was not sufficient to look at the number of cases dealt with and the outcome of the proceedings; account must also be taken of the number of years that had elapsed since the State party had signed the instrument in question and the relative size of its population. If those parameters were taken into account, the United Kingdom's record compared extremely well with other countries; it was in fourteenth or fifteenth place out of 30 countries. What was more, it was interesting to note that most of the countries with lower ratings than the United Kingdom had in fact incorporated the European Convention into their domestic law. In his Government's view, that clearly showed that too much importance should not be attached to incorporation as a means of providing practical remedies to individuals.

16. Reference had also been made to the length of the procedures. His delegation submitted that alleged violations of the European Convention were unlikely to be resolved more quickly through incorporation. That was clearly indicated by the statistics on cases examined in Strasbourg. Concluding his observations on that question, he assured members that the Government's position on the incorporation of the provisions of an international instrument into domestic law had been given careful thought and was the result of a detailed study; he would make a point of transmitting the Committee's comments to the United Kingdom authorities.

17. Concerning the protection of rights in Northern Ireland, he pointed out that the various components of the United Kingdom had different legal systems and were free to develop legislation which reflected their own needs and circumstances. It would be agreed that that was a rather positive element, reflecting the freedom given to those communities to decide their own affairs, within the framework of the general principles that applied to the

United Kingdom as a whole. As to the question whether there was a timetable for extending safeguards against racial discrimination in Northern Ireland, his delegation had nothing to add to what it had already said, save that intensive consultations had already taken place and would continue on that question, and that they would lead to detailed proposals which would be announced as soon as possible.

18. Questions had also been asked about possible further safeguards for human rights in general in Northern Ireland. In that connection, he referred to the documents he had already mentioned in his opening statement. Paragraph 12 of the document entitled, "A Framework for Accountable Government in Northern Ireland" set out plans for reinforcing the protection for specified civil, social and cultural rights, especially in areas within the competence of the new political institutions and on the basis of principles to be agreed in consultations between the parties. The means of such protection would accord with the constitutional arrangements of the United Kingdom and would build on existing safeguards.

19. Paragraph 50 of the document entitled "A New Framework for Agreement" stated that the agreement between the Government of the United Kingdom and the Government of the Republic of Ireland would include an undertaking to ensure the systematic and effective protection of common specified rights, and that the two Governments would seek agreement with the political parties of Northern Ireland on the rights to be specified and how they might best be further protected. There was an additional undertaking to introduce legislation to give effect to whatever agreement was reached. Among the additional means of protection were the appointment of commissioners or bodies to oversee particular areas of possible concern and the introduction of machinery to ensure that draft legislation conformed to existing international obligations or the model of the Northern Ireland Constitution Act of 1973, which made invalid any law attempting to discriminate on the grounds of religious belief or political opinion.

20. Lastly, his Government believed that the best interests of Scotland and Wales, whose situation was in no way comparable with that of Northern Ireland, were served by direct representation in the central Government, while also providing them with large measures of autonomy at the local level. That was why Scotland and Wales each had a Secretary of State in the Cabinet with substantial responsibilities for policy. In addition, in response to concerns, especially Scottish concerns, the Government had changed certain parliamentary procedures. The development of government in Scotland and Wales was the subject of continuing political debate in the United Kingdom, but his Government would continue clearly to assert its belief in the value for the people of Scotland and Wales of the continuation of the Union.

21. Mrs. EVANS (United Kingdom) said that she would like to speak about the question of the Optional Protocol to the Covenant, which the United Kingdom had not ratified. The members of the Committee had put forward some attractive arguments in favour of ratification, the main one being that the Covenant and the European Convention on Human Rights protected different rights and therefore, according to some members, there might be gaps in the protection of rights in the United Kingdom. Obviously a comparative analysis of the two instruments could be made, but that would not be an entirely

profitable exercise. At the risk of oversimplification, it might be said that although some rights were not guaranteed in the European Convention, that did not mean that an individual could not bring a complaint for violation of a right set forth in the Covenant and not in the Convention (e.g. in art. 10, art. 14, art. 23, para. 1, art. 24 and art. 27 of the Covenant) under a similar article of the Convention. Other rights were covered by both instruments, but not in identical terms. That was the case with article 2, paragraphs 2 and 3, and article 7 of the Covenant. It should be borne in mind that the Bill of Rights of 1689 outlawed cruel and unusual punishment (corresponding to art. 10 of the Covenant), and a recent case concerning prison conditions clearly showed that it was possible for the courts of the United Kingdom to consider, by reference to the Bill of Rights, questions that were not set forth in the European Convention. In addition, the European Convention made provision for property rights, about which the Covenant was silent. In any event, although an individual might not be able to seize the European Commission of Human Rights in Strasbourg because the Convention did not contain provisions enabling him to do so (whereas the Covenant would enable him to seize the Human Rights Committee), that individual was not without a remedy. In the case of prison conditions, for example, he could address himself to the boards of visitors of prisons, the Secretary of State or, since 1994, the Prisons Ombudsman or his counterpart in Scotland.

22. As to other rights, the law provided comprehensive protection for children, and the race relations and sex discrimination legislation also provided safeguards. There were abundant examples of remedies available to individuals for enforcing their rights, but she would focus on two areas mentioned by one member of the Committee - immigration and privacy.

23. Regarding immigration, it had been asked how the right to take proceedings before a court, set forth in article 9, paragraph 4, of the Covenant, was guaranteed. Powers of detention in relation to immigration were set forth in the Immigration Act of 1971. Detention in such cases was not subject to a prior decision by a court and could be resorted to pending completion of the investigation into whether the person in question should be granted leave to enter the United Kingdom or in connection with a deportation provision. Continued detention was only lawful if the particular circumstances fell within any of those powers; the remedy of habeas corpus remained available to challenge detention based on those powers.

24. Remedies were also available to anyone who believed that his right to privacy had been violated. The issue of press freedom and individual privacy presented a difficult balance to be struck. Two reports had recently been published in the United Kingdom and considered by the Government: one dealt with the question of press self-regulation and the other with privacy and media intrusion.

25. The Government had just issued its conclusions after a careful consideration of the two reports. It had announced that, in its view, it would not be right to legislate in order to control the press and it had therefore rejected the proposals (made in the reports) to set up a statutory press complaints tribunal or a statutory press ombudsman. It had also rejected the idea of establishing particular criminal offences or a new civil

remedy for infringement of privacy. At the same time, it had recommended improving press self-regulation and further improvements in the public interest.

26. Generally speaking, her Government considered the Optional Protocol to be just that: optional. Regarding article 27 of the Covenant, for example, it considered that the procedure set forth by the Optional Protocol was not the most appropriate way to examine issues concerning group rights, and that the article raised social and cultural issues which were better dealt with in the framework of the periodic reporting system. Her country's position on the Optional Protocol must be seen against the background of the rights and freedoms guaranteed by the British system; they could only be removed or restricted by express legislative provisions. To the extent that the United Kingdom considered that specific further rights should be conferred on individuals, it had taken the necessary measures, but it did not consider the Optional Protocol an appropriate means for securing any additional protection of rights.

27. Regarding the reservations made by the United Kingdom to certain articles of the Covenant, she invited the Committee to await consideration of the report on the dependent territories before dealing with the reservations to article 11, article 14, paragraph 3 (d), and article 23, paragraph 4. As to the other reservations, the United Kingdom had carefully reviewed the grounds for the reservations to articles 10, 12 and 24 of the Covenant, together with the general reservation on military and custodial discipline, and had concluded that they should be maintained.

28. Concerning the reservation to article 10, it should first of all be pointed out that her Government supported the general principle, laid down in article 10, paragraphs 2 (b) and 3, that detained juveniles should be separated from adults. However, in the United Kingdom, there was a third age group, i.e. young adults aged between 18 and 20. Sentenced male offenders were as a rule held in separate prison premises, although in some circumstances it was deemed necessary to depart from that principle, in the interest of the juveniles themselves, for example in order to allow access to particular facilities. Accused 15 to 17-year-olds awaiting trial and 18 to 20-year-olds in the same situation were regularly held together in order to provide them with a reasonably large social group. Young people aged 15 to 17 could only mix with prisoners aged 21 or over in very limited circumstances and under strict supervision.

29. The United Kingdom had entered reservations to article 12, paragraphs 1 and 4, and continued to consider them necessary, as only British citizens had an absolute right of entry and of abode in the United Kingdom. All other persons entering the United Kingdom were subject to immigration control. As there were no plans to remove that control, the reservation remained appropriate. The reservation to article 12, paragraph 4, was based on similar grounds. Those matters were of great importance to the United Kingdom, which wished to spell out the limits on its international obligations in order to discharge them more effectively.

30. The United Kingdom could not accept without reservation article 24, paragraph 3, as the 1981 Nationality Act did not provide for British citizenship to be acquired as of right by birth in the United Kingdom. To acquire British citizenship automatically, children must be born to British citizens or to parents who were settled in the United Kingdom. The Act gave citizenship to children born stateless provided they had a connection with the United Kingdom through residence or parentage.

31. With regard to the general reservation concerning the preservation of service and custodial discipline, her Government believed that if any measure adopted with the aim of preserving discipline was in conflict with the Covenant, procedures authorized by United Kingdom law should prevail. That general reservation was justified by the need to authorize measures that were indispensable to ensure the effectiveness of the armed forces and necessarily entailed restrictions on individual freedom. Similarly, custodial discipline was considered to be of the highest importance, in particular when it was necessary to prevent the spread of insubordination.

32. Mr. HALLIDAY (United Kingdom), concluding his delegation's observations on the question of reservations, requested the Committee to bear in mind that his Government had not adopted an unthinking attitude but had given serious thought to all the implications of withdrawing its reservations before deciding to maintain them.

33. In the case of article 26 of the Covenant, his Government's approach was certainly different from that of the Committee, which had a different interpretation of the ambit of the article. In the view of British jurists, the article was essentially about the rule of law. Notwithstanding that divergence of views, the United Kingdom delegations which had participated in the consideration of the successive periodic reports had always tried to be forthcoming about the question of equality and non-discrimination, even if they had done so not under article 26, but under articles 2 and 25. The authors of the fourth periodic report could certainly have given greater attention to the numerous measures adopted to combat discrimination than they had actually done, and his delegation would certainly think further about how the Committee could in the next report be fully informed of the action taken in that sphere.

34. In the United Kingdom, all non-governmental organizations that wished to do so took part in public life. It was true that they had not been directly involved in preparing the fourth periodic report, nor had its preparation been the subject of any parliamentary procedure. However, copies of the report had been placed in the libraries of the Houses of Parliament, the British Library and other deposit libraries on the day of its submission to the United Nations. Once it had been written, the report had been the subject of a parliamentary debate, and any citizen who wished to do so could acquaint himself with it. Copies had also been sent as a matter of course to the main British non-governmental organizations and to any others that had expressed an interest, and, on request and free of charge, to any interested members of the public. There were plans to make the report available on the Internet. The summary records of the meetings devoted to consideration of the fourth periodic report would also be made widely available.

35. One member of the Committee had inquired why no report on the investigation carried out by Mr. Stalker in Northern Ireland had been published. The investigation had been a criminal one, and it was quite clear that if its findings had been made public, persons who had been prepared to testify in connection with the investigation would no longer have been prepared to do so and would even have been in grave danger. However, it was as a result of prosecutions of police officers following a number of deaths in 1982 that Mr. Stalker had been given the task of carrying out his investigation. It was the independent Director of Public Prosecutions for Northern Ireland who had decided that no further prosecutions should be brought, in the public interest. The matter had been the subject of a full debate in Parliament, and it had emerged that considerations of national security had justified the decision not to bring prosecutions, as lives had been at risk and the efforts of the police to prevent terrorist activities might have been frustrated.

36. Regarding the release on licence of Private Clegg, it should be made quite clear that he had been convicted of murder and not manslaughter, a conviction which had been upheld on appeal in Northern Ireland and by the House of Lords. However, the trial had raised concerns about the state of a law which had effectively required a conviction for murder and therefore the imposition of a life sentence. In its judgement, the Court of Appeal had emphasized that Private Clegg had not intended to kill or wound anyone when on patrol, but merely to perform his duty to maintain law and order. The Court had added that he had rightly been convicted because he had used his firearm unlawfully, but it had taken the view that the law would have been much fairer if the trial judge had been able to convict Private Clegg of manslaughter rather than murder. A review of the law was under way regarding criminal offences of that nature.

37. The death of Joy Gardner was indeed a tragic case, and the Government had expressed its great regret. Three officers had been charged and then acquitted, and the disciplinary proceedings against them had not resulted in any disciplinary action. He could only point out that all the appropriate procedures had been followed. In addition, the expulsion procedure which had led to the victim's death had been thoroughly reviewed by the authorities, and he would return to the outcome of that review when replying to the question on the deportations and removals of illegal entrants (section III (e) of the list of issues (M/CCPR/C/54/LST/UK/4)).

38. It was well known that there was no prescribed religion in the United Kingdom, and any unjustified interference with the right of everyone to practise his religion freely could constitute a punishable offence. Religious organizations were free to own property, to run schools and to promote their beliefs in speech or writing. A voluntary body of any religious persuasion could submit to the Secretary of State for Education an application for permission to establish a school. All applications were considered case by case, regardless of the denomination or faith, although on the basis of certain common criteria. There were no public-funded Muslim schools and no applications to establish grant-maintained schools had been made. However, three applications to set up voluntary-aided schools had been filed. One had been withdrawn as the body had not obtained the necessary planning permission, another had been rejected because there had been surplus education capacity in

the area concerned, and the third had also been rejected because the proposed accommodation had been judged less than adequate. In the latter case, there was nothing to prevent the application from being submitted again.

39. Where Northern Ireland was concerned, the Government was committed to ensuring full equality of opportunity and the elimination of all forms of discrimination. In one respect, Northern Ireland's labour legislation was probably the strongest in Europe. Over 4,000 organizations were registered and they monitored the Catholic and Protestant share of the workforce annually. The Catholic share was increasing at an annual rate of 0.5 per cent, and they currently accounted for 37.3 per cent of the labour force. Since 1990, the number of Catholic professionals had increased by 5.4 per cent. During the passage of the Fair Employment in Northern Ireland Bill through Parliament, the Government had undertaken to carry out a review of the legislation after five years, and the Independent Standing Advisory Commission for Human Rights, which had been entrusted with that task, would submit its report in 1996. It was the Commission's role to monitor observance of the law as a whole.

40. In the case of the murder of Mr. Finucane, the Department of Public Prosecutions had not found sufficient evidence to mount a criminal prosecution, although the victim's widow had brought a civil action, which was following its course. The Committee would understand that he was unable to comment any further.

41. Those members of the Committee who had expressed concern about the fate of Gypsies or travellers had probably had in mind the new Criminal Justice and Public Order Act, adopted in 1994, which, it was true, gave stronger powers to the police over trespassers en masse. The aim of the Act was in no way to prevent law-abiding travellers from pursuing their chosen lifestyle. The stronger provisions introduced by the Act were designed to protect citizens and only concerned disorderly behaviour or public nuisance.

42. Where domestic violence was concerned, he explained that the question had been debated at length in Parliament. The Government's view was that domestic violence should be treated as a crime. In particular, the perpetrators of domestic violence should be brought before the courts and the victims given assistance. Furthermore, the authorities were endeavouring to develop policies to prevent domestic violence. A ministerial body had been appointed to coordinate national and local measures to address that problem. The Government recognized that, in order to take effective measures, it was essential to obtain the involvement of local authorities and bodies, which should be fully involved in developing preventive strategies and supporting victims. The Government was currently drawing up relevant guidelines. Furthermore, a national campaign to develop public awareness had recently been organized. As to the punishment of offences, United Kingdom legislation laid down substantial penalties. The Government spent some £10 million annually on victim support. Civil law had also been reformed and now provided more extensive grounds for bringing cases before the competent courts. In addition, the courts would henceforth be able to issue a power of arrest with their orders. Where the victims were concerned, the Government believed that

local authorities and bodies were in the best position to take the necessary measures to assist them. The nature and extent of refuge provision for victims of violence were currently being reviewed.

43. Statistics on cases of violence should be treated with caution. While official figures for reported cases of domestic violence showed an increase, that was mainly because people had greater confidence in their country's courts and lodged complaints more frequently than in the past when they were attacked. As a result, current statistics shed light on a part of the phenomenon that had previously been hidden.

44. In reply to a question on the mandatory life sentence for murder, he said that an appeal could be made against any such sentence and the courts could, on appeal, decide to change the classification of the offence and thus to commute the sentence. The authorities nevertheless believed that it was important to maintain the life sentence for murder, on account of the unique heinousness of that crime.

45. In reply to a question on crime among ethnic minorities in London and the response of the police, he said that the measures currently being developed by the police authorities were designed to counter crime and to respond to public concern at the rise in the number of crimes. Some measures had met with success, in particular those to prevent burglaries and to prosecute housebreakers. As a whole, a number of surveys had shown that in areas with a large ethnic minority population, both victims and offenders frequently came from the same minorities. Consequently, the police were seeking to involve local ethnic minorities in tackling crime. In that connection, letters had been sent out requesting the various communities to cooperate with the authorities. The reaction to the letters showed that people generally believed that problems were settled better by tackling them head on rather than leaving them unaddressed. The Government had supported the police's efforts to resolve the difficulties with the backing of the various communities in London.

46. In reply to a question about racial discrimination within the police and prison service, he said that the Government did not deny that there were some problems in that area. He recognized that much remained to be done, in particular in the recruitment and promotion of members of ethnic minorities in the police. In 1993 the Government had adopted a number of measures applicable to the police. In particular, the police had been instructed to gather information on the number of ethnic minority officers in the force compared to the size of the force and to the local ethnic minority population.

47. The police had also been asked to spell out the measures they intended to take to increase the proportion of officers from ethnic minorities. It had also been decided to study the retention and wastage of officers from ethnic minorities. Certainly, the shortcomings and imperfections identified in the past would be duly taken into account in order to improve the relevant policies and practices. In that connection, it should be mentioned that the police recruitment test had been revised in 1992, in order to ensure a fair and efficient selection of applicants. The new procedure had previously been studied by independent consultants. Generally speaking, a lot of progress had

been made in equal opportunity policies and strategies. However, the longest and most arduous task was to transform those policies and strategies into real change on the ground, in attitudes and in individual behaviour.

48. On the question of the Prison Service, prison governors had been asked to make a particular effort to attract applications from members of ethnic minorities. Between autumn 1992 and autumn 1993, 7.5 per cent of prison officer candidates had been from ethnic minorities (the figure had been 37.8 per cent in London); 2.3 per cent of candidates had been successful. The authorities realized that the failure rate was high among ethnic minorities and that the nature of the tests would have to be revised accordingly. However, there was a more encouraging figure: between January 1990 and October 1993, 180 prison officers from ethnic minorities had been appointed.

49. Regarding the alleged discrimination against the black minority in prisons, he said that studies carried out so far had not provided clear evidence of the existence of widespread discrimination within the criminal justice system. However, the authorities attached particular importance to observing the rule of non-discrimination. The Criminal Justice Act of 1991 required the Government to provide prison employees with any information that might help them in the performance of their duties, in particular to prevent any form of discrimination. In the same connection, the Judicial Studies Board, which supervised the training of judges, had set up an advisory committee on ethnic minorities some years before; one of its responsibilities was training on issues concerning those minorities.

50. In reply to a question on radio and television broadcasts in the Irish language, he said that broadcasts in Northern Ireland came under the responsibility of the British Broadcasting Corporation and independent companies. The Government of Ireland had asked the British Government whether it intended to establish an Irish-language television station and, if so, whether it would operate on an all-Ireland basis. That was a complex issue, which would first have to be discussed from the technical standpoint. There were some 5,000 Irish speakers in Northern Ireland, and so the situation was rather different from that in Scotland and Wales. In that as in other spheres, the Government was endeavouring to develop responses that were geared to local circumstances and needs.

51. The CHAIRMAN invited the delegation of the United Kingdom to reply to the questions in section II of the list of issues (M/CCPR/C/54/LST/UK/4):

"II. State of emergency; right to life, liberty and security of the person, treatment of prisoners and other detainees, and right to a fair trial (arts. 4, 6, 7, 9, 10 and 14)

(a) In view of current developments in the situation in Northern Ireland and the lapse of time since the notification of derogation from the obligations under certain provisions of article 9 (12 December 1989), does the United Kingdom intend to reconsider the necessity of such derogation and amend the rules governing extended detention in order to introduce some form of judicial supervision (see paras. 77 to 80 of the report)?

(b) Please provide information on conclusions reached pursuant to the latest annual parliamentary review of the Northern Ireland (Emergency Provisions) Act 1991 (see para. 181 of the report).

(c) Please further comment on the specific rules and regulations governing the use of weapons by the police and security forces under anti-terrorism laws in Northern Ireland. In particular, comment on the use of the new plastic bullets and consequences thereof and describe the role and powers of the independent Director of Public Prosecutions in so far as investigation of incidents involving members of the security forces is concerned (see paras. 95 to 101 of the report).

(d) In the light of the discussion during the consideration of the third periodic report, please clarify whether the planned review of prison rules and standing orders in Northern Ireland has been completed and, if so, whether any of the changes adopted in the rest of the United Kingdom has been incorporated in such rules.

(e) In view of the prohibition of inhuman or degrading punishment under the Education Act 1993, please clarify the type of corporal punishment which can still be administered in independent schools (see para. 169 of the report).

(f) Are guarantees for the protection of the rights of convicted persons held in prisons ensured to persons detained in prison cells under Section 6 of the Imprisonment (Temporary Provisions) Act 1980 (see paras. 257 to 259 of the report)?

(g) Has the necessary legislation for the setting-up of the independent Criminal Cases Review Authority been adopted and, if so, has the Commission initiated its work (see para. 316 of the report)?

(h) Please further comment on the institution of the Prisons Ombudsman. Have his activities had any impact on the situation of detainees' rights since his appointment in April 1994 (see para. 126 of the report)?

(i) Please provide information on prisons contracted out to the private sector. Are those prisons under permanent control of the State and how is the application of the law and of the rights of prisoners guaranteed therein?

(j) What have been the results of the experiment concerning the tape-recording of all police interviews with terrorist suspects in England and Wales? Will the law be amended to make the practice permanent (see para. 174 of the report)?

(k) Has Parliament already passed the law allowing courts in England and Wales 'to draw what inferences appear proper from the fact an accused person has remained silent' as is currently the case under the legal rules applicable in Northern Ireland (see paras. 320-328 of the report)?"

52. Mr. HALLIDAY (United Kingdom), replying to question (a), said that the Home Secretary had informed Parliament on 8 March that the Government had kept under review the need for the derogation in question and had decided that it would be premature to withdraw it. The main terrorist paramilitary groups had proclaimed a cessation of hostilities, which had enabled the Government to enter exploratory dialogue with political representatives and to reduce some security measures. However, it should be borne in mind that the terrorist groups remained fully capable of carrying out violent attacks, either in Great Britain or Northern Ireland. In those circumstances, there was every justification for authorizing the detention without charge, for up to seven days, of persons suspected of terrorist acts.

53. More generally, the issues raised under question (a) had been studied in a report prepared by an independent reviewer appointed to examine emergency legislation. According to the reviewer, it was not advisable to create a system of "judicial supervision", for a number of reasons. First, decisions resulting in prolonged custody in Northern Ireland were invariably based on information that could not be adduced in court without jeopardizing individuals, in particular police informants. Secondly, some details could not be revealed to the detainee. Thirdly, the judge would not be able to give reasons for his decision and thus there would be no real possibility of appeal against it. The authorities believed that the provisions governing detention as referred to in question (a) did not constitute a judicial procedure, but involved an executive decision. Lastly, the Government considered that the adoption of a system of "judicial supervision" would undermine public confidence in the judicial system.

54. With regard to question (b), he said that the Northern Ireland (Emergency Provisions) Act of 1991 had been the subject of an independent review and renewed by Parliament on 15 June 1995 for a further year. The independent reviewer had concluded that the Act should be maintained but that it should be kept under review. Parliament and the Government had fully endorsed that view. The Act would therefore expire in 1996, and it would be possible to suspend individual provisions in the meantime. The Government had in fact stated that it would not hesitate to do so, after consulting the security forces.

55. The authorities looked forward to the day when the emergency legislation would be repealed, as soon as the situation permitted. Although the worst forms of violence in Northern Ireland had ceased one year earlier, that period was not sufficient to enable the Government to state with certainty that permanent peace had been established. Paramilitary groups on both sides were refraining from using violence for political ends, but the organizations and structures had not been disbanded and the weapons had not been decommissioned. The IRA and loyalist paramilitary groups were continuing all their activities short of acts of violence that would breach the cease-fire. They were continuing to store and hide weapons and to take action designed to intimidate the population; although they were not using firearms, they were still carrying out assaults.

56. For all those reasons, his Government believed that it would be wrong to remove the protection afforded by the anti-terrorist legislation. Nevertheless, that legislation had been used less often since the proclamation

of the cease-fire. The number of people suspected of terrorist offences who had been arrested under the Prevention of Terrorism Act had decreased by two thirds. Since October 1994, only 12 people had been detained for over 48 hours. During the first quarter of 1994, there had been 1,379 house searches; for the same period in 1995 that figure had fallen to 164.

57. The Government remained committed to the principle that the powers contained in the Act should be available for no longer than necessary. During the parliamentary debate of 12 June 1995, the Secretary of State for Northern Ireland had announced that, provided peace continued in Northern Ireland, the authorities would hold an independent review of the continuing need for counter-terrorist legislation. The timing of that review had not yet been decided; pending that review, it might be necessary to seek new legislation before the Act expired in 1996. Any new provisions would be only temporary, however, and the implementation of many of them might be suspended from the outset.

58. Regarding question (c), he said that the law on the use of weapons in Northern Ireland was based on common-law rules of self-defence and on the provisions of the Criminal Law Act (Northern Ireland) of 1967. Under those provisions, members of the security forces could only use such force as was reasonable in the circumstances for the prevention of crime or in effecting, or assisting in, the lawful arrest of offenders or suspected terrorists. The legislation applicable to Great Britain and Wales contained similar provisions. Members of the security forces enjoyed no immunity and were responsible for their acts under the law. Any incident involving members of the security forces which resulted in death or injury was thoroughly investigated by the police. An independent commission was responsible for examining complaints against the police in Northern Ireland. If the Royal Ulster Constabulary was involved, the case was supervised by the commission. The results of those investigations were passed to the independent Director of Public Prosecutions for Northern Ireland (see report, para. 99), who decided whether a prosecution should be brought; he could also order further inquiries. He added that no one had been killed by the security forces in terrorist-related circumstances since November 1992. The British authorities hoped that the current developments in Northern Ireland would continue.

59. In reply to the question on the use of new plastic bullets, he said that the army and the Royal Ulster Constabulary had been using a new weapon since 3 June 1994. That weapon, which had replaced one that had become obsolete, had only been adopted after a series of trials, and appropriate training was given to people using it. The adoption of the new weapon had made it possible further to reduce the already low risk connected with the previous weapon. A new baton round had also been introduced, the only difference between it and the old one being that it was made from a different material (the material used for the old baton round was no longer available).

60. On question (d), he said that the new prison rules and young offenders' centre rules had entered into force in Northern Ireland on 1 March 1995. The texts of the rules had been adopted after consultations with several competent groups. The standing advisory commission on human rights had said that the draft rules represented a significant step towards providing a regime capable of more effectively safeguarding prisoners' rights. The new rules took due

account of the comments made during the consultations. In addition, the Northern Ireland Prison Service had adopted a series of rules that reflected its own particular needs. The new rules were based on a number of principles, including improvement of living conditions, respect for the individual, equal treatment, reasons for decisions, family links and information to prisoners. In addition, for the first time specific provisions had been introduced on conditions of imprisonment and on complaints and requests.

61. In the Government's opinion, the question could not be dealt with uniformly throughout the United Kingdom; particular circumstances and needs must be taken into account. Not all the changes made in the rest of the United Kingdom had necessarily been replicated in Northern Ireland.

62. With reference to question (e), he said that it was for head teachers of private schools to decide what type of corporal punishment was appropriate in their establishments. That having been said, article 47 of the Education Act (No. 2) of 1986, as amended by the Education Act of 1993, laid down precise criteria for determining whether punishment was inhuman or degrading. That legislation was also in keeping with the Convention on the Rights of the Child, which stipulated that disciplinary measures must respect the child's dignity. Only a very small number of private schools still administered corporal punishment.

63. Regarding question (f) on persons detained in police cells, he explained that everyone in that situation, whether or not they had been sentenced, was detained under the Imprisonment (Temporary Provisions) Act of 1980 (see report, para. 258). Those detainees were held in police custody: the Prison Rules of 1964 (amended) were not applicable. The Prison Service, for its part, ensured that persons held in police cells were properly treated. To that end, officials had been designated to help the police take steps to enforce certain minimum rules, in particular regarding the cells themselves, clothing, medical care, family visits, correspondence, food, visits by "lay visitors" (see report, para. 152) and how to give effect to detainees' complaints.

64. That having been said, both the Government and the Prison Service made every effort to avoid holding in police custody people who in fact should be in prison. In all cases, police cells were only used as a last resort, and for the briefest possible periods. Efforts were also being made to increase prison capacity. Some people had been held in police cells in 1994 and early 1995 because of a sudden and unexpected increase in the prison population. He was pleased, however, to inform the Committee that that practice had been dropped as of 15 June 1995. The authorities would see to it that the previous situation did not recur.

65. Replying to question (g), he said that the Criminal Appeal Bill had been considered by Parliament very recently. The Government would like the criminal cases review authority to begin its work as soon as practicable. However, setting it up would undoubtedly take several months, and it would probably not be operational until early 1996. In the meantime, the Home Secretary and the Secretary of State for Northern Ireland would continue to consider carefully all cases brought to their attention, and would take appropriate action in each case.

66. On question (h), he said that the role of the Prisons Ombudsman was to investigate individual complaints by prisoners and to make recommendations to the Prison Service. The Ombudsman had only begun to receive and consider grievances in October 1994, and it was therefore too soon to make any generalizations about his activities. That having been said, the Ombudsman had received 319 complaints within his jurisdiction as of late May 1995. Investigations had been completed in 188 cases, and 81 complaints had been upheld; 61 of the Ombudsman's recommendations had been accepted by the Director-General of the Prison Service, 2 had been partly accepted, 11 had been rejected and 18 were still under consideration. The Prisons Ombudsman would submit an annual report to the Home Secretary; that report would primarily deal with specific aspects of the treatment of prisoners.

67. With regard to question (i), he said that contracted-out prisons were controlled by the Criminal Justice Act of 1991 and contracts concluded between the Secretary of State and the contractor. Contractors were required to provide a high-quality regime that included education and work programmes, and to allow prisoners substantial time outside their cells and visits. There were currently four such prisons; six more would be built and financed by the private sector. The contracts provided for financial penalties in the event of failure to deliver the required services or non-fulfilment of the targets set. The contract was monitored at each prison by two on-site Prison Service controllers, who were also responsible for adjudication of disciplinary matters. All prisons were open to inspection by the Chief Inspector of Prisons and by an independent board of visitors. The staff in a contracted-out prison underwent approved training and were vetted by the Prison Service acting on behalf of the Secretary of State.

68. Replying to the questions under (j), he said that the results of the trial tape-recording of police interviews with terrorist suspects were currently being evaluated and would shortly be submitted to the Home Secretary, who would draw his conclusions and decide whether the practice should become permanent. Until then, the police would continue to tape-record such interviews.

69. Regarding question (k), he said that the Criminal Justice and Public Order Act, which contained provisions allowing courts to draw what inferences appeared proper from the fact that an accused person had remained silent, had been adopted on 3 November 1994; the provisions concerning the right of the accused to remain silent had entered into force on 10 April 1995. Under those provisions (see report, para. 323), a court or jury could draw such inferences as might appear proper from: (a) a suspect's failure to mention a fact when questioned under caution or charged, if he subsequently relied on that fact in his defence and if he could reasonably have been expected to mention the fact when so questioned or charged; (b) the failure of the accused to give evidence at trial on his own behalf; the court must satisfy itself that the accused was aware that he had the opportunity to give evidence and that the court or jury might draw inferences from a failure to do so; the defendant was not, however, under any compulsion to give evidence (that provision did not apply to children or to defendants whose physical or mental condition made it undesirable for them to give evidence); (c) the failure or refusal of the accused to account for objects, substances or marks found on or about his

person or at the place where he had been arrested; (d) the failure or refusal of the accused to account for his presence at a particular place at the time of arrest.

70. It should be emphasized that none of those provisions compelled a suspect or defendant to say anything if he did not wish to do so, that the principle of the presumption of innocence was respected and that it was still for the prosecution to prove the case against the accused beyond reasonable doubt (report, para. 324). According to the Police and Criminal Evidence Act of 1984, the interviewing police officer must inform the suspect, in ordinary language, of the offences he was investigating, the facts he was asking the suspect to account for, the consequences for the suspect of participation in the offence in question and the fact that the court might draw inferences from the suspect's failure to give explanations. He must also tell the suspect whether his testimony was being tape-recorded and might be given in evidence. Those safeguards were in addition to the ones mentioned earlier, namely, the tape-recording of police interviews and suspects' access to legal advice.

71. The CHAIRMAN said that the United Kingdom delegation had completed its replies to the questions in section II of the list and invited members of the Committee to ask additional questions if they so wished.

72. Mr. BHAGWATI asked whether the provisions concerning the tape-recording of police interviews were in force in England and Wales only and not in Northern Ireland; if they were not in force in Northern Ireland, that safeguard was not being fully respected throughout the country. In addition, if a lawyer's presence could be postponed for 48 hours, suspects could be interviewed for that entire period without a lawyer, which also undermined defence rights. He wondered whether a suspect who had been informed that he was entitled to remain silent but that his decision might be held against him was not being indirectly pressured, to the detriment of the right to be presumed innocent and the right not to be compelled to confess guilt. Those two rights were clearly set forth in article 14, paragraphs 2 and 3 (g), of the Covenant.

73. In connection with article 14 of the Prevention of Terrorism (Temporary Provisions) Act of 1989, under which the police could arrest anyone on a reasonable suspicion that he had been concerned in the commission or preparation of acts of terrorism, he asked whether that did not constitute an abuse of authority by the police with respect to people who had not even been informed of the reason for their arrest. Lastly, he would like to know whether it was true that people detained under the emergency legislation could be deprived for 48 hours of their right to inform their family of their arrest and their right to contact a lawyer.

74. Mr. LALLAH, speaking also on behalf of Mr. Mavrommatis, asked to what extent the provisions concerning a suspect's right to silence were compatible with those of article 14 of the Covenant. He would like to know in particular whether, while being subjected to considerable pressure by the police, a suspect had the right to legal advice when deciding whether or not to remain silent. It seemed that the accused was not necessarily in a position to

determine, without the help of a lawyer, what inferences a court or jury might draw from his decision and that he would thus be deprived of an important part of his defence rights.

75. Mr. BUERGENTHAL, returning to the question of the statements made by the Chief of Police, asked whether the Government was aware of the possible implications of those statements for police officers and senior law enforcement personnel in general, and whether the statements might not be misinterpreted in a multiracial society where certain minority groups would automatically be assumed to be suspects. Concerning a suspect's right to silence, there was no doubt that the jury would make certain assumptions on the basis of a suspect's decision to remain silent after being told that he had the right to make or not make a statement. In his opinion, those provisions raised serious issues under article 14 of the Covenant.

76. Referring to paragraph 251 of the report, he asked whether the Inspectorate of Prisons was authorized to make decisions regarding the practice of a particular religion. On the matter of bail, he asked whether bail was in fact fixed by the police, as indicated in paragraphs 185 and 187 of the report, and, in connection with the Asylum and Immigration Appeals Act mentioned in paragraph 190 of the report, on what legal basis courts received applications for habeas corpus under the Act.

77. In connection with paragraphs 219 and 220 of the report, he asked whether there were remedies that could be filed in respect of a "discretionary life sentence", how the members of the Discretionary Life Panels of the Parole Board were appointed and what their qualifications were. Finally, he would like to know for what reasons the Home Secretary might not accept a recommendation for release or the judicial view on tariff (para. 225).

78. Ms. CHANET said that, as she understood it, the emergency laws had been "applied less often" since the improvement of the situation in Northern Ireland. Did that mean that those laws were still in force but were applied differently, or that fewer acts punishable under those laws were committed? In connection with paragraph 328 of the report, she wondered why the Government had disregarded the opinion of the majority of the members of the Royal Commission on Criminal Justice, which had recommended that the bar against adverse inferences from silence should be maintained. She considered that certain aspects of the new Criminal Justice and Public Order Act might be contrary to the provisions of article 14, paragraph 3 (g), of the Covenant and, what was more certain, that the Act undermined the principle of equality. Drawing inferences detrimental to the accused, who already had considerably reduced means available to him and simply failed to furnish certain explanations, introduced a further degree of imbalance between him and the prosecution.

79. Also in connection with the Criminal Justice and Public Order Act, she asked what were the types of press articles and information on terrorism whose possession might constitute a criminal offence. And why had there been a considerable increase in the number of suicides in prisons over the past 10 years? Finally, she asked for an explanation of the case of the nephew of Patrice Lumumba, reported by Amnesty International, who had allegedly been ill-treated and died in detention after applying for asylum.

80. Mr. KRETZMER noted that the more open and democratic the society of a particular country was, the more numerous and varied were information sources, such as NGOs. He wished to stress, however, that in no circumstances did he blindly accept the information thus available to him. That having been said, a number of NGOs had cast doubt on the credibility of the system in the United Kingdom for criminal investigations of complaints against members of the police and the army. The United Kingdom delegation might perhaps furnish some clarification, especially in view of what was stated in the first sentence of paragraph 99 of the report. Also in that connection, serious allegations had been made regarding cases of collusion between "loyalists" and members of the security forces in Northern Ireland. An incident related to that practice had allegedly been at the origin of the murder of a Catholic solicitor, Patrick Finucane, a crime that had gone virtually uninvestigated by the police. In view of those allegations, and those contained in the 1994 Amnesty International report, what mechanisms that were credible in the eyes of all the Communities of Northern Ireland, and indeed England, Scotland and Wales, had been set up to ensure that the necessary investigations were carried out?

81. Lastly, concerning corporal punishment in schools, the delegation had stated that inhuman or degrading punishment had been banned, but it should make it clear what types of punishment were still allowed.

The meeting rose at 6.05 p.m.



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HUMAN RIGHTS COMMITTEE

Fifty-fourth session

SUMMARY RECORD OF THE 1434th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 21 July 1995, at 10 a.m.

Chairman: Mr. AGUILAR URBINA

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of the United Kingdom of Great Britain and Northern Ireland (CCPR/C/95/Add.3; HRI/CORE/1/Add.5/Rev.1) (continued)

1. The CHAIRMAN invited members of the Committee to put further questions related to section II of the list of issues.
2. Ms. MEDINA QUIROGA said she understood from the fourth periodic report (CCPR/C/95/Add.3) that the introduction of tape recordings of interviews was intended as a further safeguard for those being interrogated by the police. Yet paragraph 175 stated that the recording of interviews with terrorist suspects in Northern Ireland "would not be in the overall interests of justice" because it would "inhibit the chances of lawfully obtaining information that would lead to the conviction of terrorists or to the saving of other people's lives". In that connection, she remarked that the absence of tape recordings significantly enhanced the possibility of putting pressure on persons who were being interrogated. Human rights provisions had been similarly obtrusive in the case of the "five techniques", the use of which had been halted following criticism by experts and a decision by the European Court of Human Rights that they constituted a violation of article 3 of the European Convention on Human Rights. She inquired about the reasons for the different interrogation procedures used for suspects and detainees in Northern Ireland.
3. She shared Mr. Kretzmer's concern regarding investigations of alleged military, paramilitary and police offences. For years she had been hearing reports from the families of victims of such offences in Northern Ireland, reports that conveyed a sense of desperation in the face of their inability to ascertain the full facts of the case concerned. In connection with "shoot to kill" allegations, she had heard that those responsible for shootings were not required to attend inquests and were not questioned. Public interest immunity certificates were allegedly issued. Inquests did not reach a verdict regarding the lawfulness of the acts investigated and there was reportedly no legal aid to allow families to be represented. A system had to inspire confidence in order to fulfil the requirements of due process. She urged the Government of the United Kingdom to set up and enforce a credible mechanism to look into such cases.
4. If adverse inferences could be drawn from a defendant's decision to remain silent, no right of silence existed. Moreover, that provision applied from the time of arrest to the time of trial. A person deprived of a lawyer for 48 hours might not even be aware of what information was relevant to the interrogation. In the case of Dermot Quinn, who had been sentenced to 25 years' imprisonment for attempted murder and possession of firearms, the facts of the case had not been clear-cut but the adverse inference drawn from his silence had been decisive in his conviction. She asked the delegation whether the United Kingdom would consider a review of the legislation in the light of the findings not only of the Royal Commission on Criminal Justice but also of the Human Rights Committee.

5. Mr. KLEIN said that in spite of all the safeguards described by the delegation he had serious doubts about the compatibility of the Criminal Justice and Public Order Act 1994, which allowed inferences to be drawn from the silence of suspects, with article 14 of the Convention. He was particularly concerned by the phrase "if the suspect reasonably could have been expected to speak". Suspects might feel that they were under pressure to speak or even confess because they were unable to assess the consequences of remaining silent. Adequate legal advice would not always be available and vulnerable suspects could easily be intimidated. The Bar Council, the Law Society and a majority within the Royal Commission on Criminal Justice had warned against the new legislation. The rule had apparently been enacted to deal with the special situation in Northern Ireland, which was certainly not the appropriate place for the development of legal rules that were conducive to the enjoyment of human rights. The law was at the very least creating an atmosphere of suspicion that might be detrimental to legal credibility. He asked the delegation to explain how a fair trial and credible investigation procedures could be ensured under those circumstances.

6. In recent years there had been a tendency, not only in the United Kingdom, to contract out core State functions to the private sector. He felt that the State was renouncing part of its legitimacy when, in particular, it contracted out functions involving the use of force in the public interest.

7. Mr. PRADO VALLEJO said that the Criminal Justice and Public Order Act created a number of offences related to public order which led to restrictions on, for example, public demonstrations. The police had special powers to dissolve and prohibit public meetings, to restrict freedom of movement and to encroach on the privacy of individuals.

8. The Prevention of Terrorism Act empowered the police to arrest people in the street, to conduct investigations and even to enter people's homes without a court order. There were reports of a wave of suicides in the prisons of Northern Ireland, allegedly connected with ill-treatment and poor conditions of detention. The emergency legislation allowed a prisoner to be held incommunicado for up to seven days, creating an unacceptable situation for immigrants in particular, who were sometimes held under inhuman conditions.

9. The Emergency Provisions Act 1991 permitted detention without trial and the Prevention of Terrorism Act allowed the Home Secretary to issue exclusion orders involving internal exile without judicial proceedings.

10. Under the Security Service Act 1989, investigations of charges against the police were carried out by the police force itself, which was therefore both judge and party.

11. Mr. FRANCIS asked whether the Brixton prison authorities had taken any steps to discipline the perpetrators of the offence of beating Mr. Claud Johnson, a violation of articles 7 and 10 of the Covenant.

12. With regard to Mrs. Joy Gardner, no infringement of the immigration law could justify the manner of her arrest, which had been of such ferocity as to lead to her death by asphyxiation. He wished to know what steps had been taken to prevent the recurrence of such excesses.

13. He joined other members in criticizing the attack on the right to silence, which undermined one of the foundations of criminal justice in the United Kingdom.

14. He had information from the Britain and Northern Ireland Human Rights Centre to the effect that over 500 prisoners were being held in Northern Ireland under very adverse conditions. Moreover, the fact that some 38 prisoners being held outside Northern Ireland was a source of grief to their relatives, who had to travel long distances to visit them. Another non-governmental organization (NGO) alleged that in the Castlereagh holding centre there was very little light for the prisoners.

15. Lastly, he understood that there was no law on racial discrimination in Northern Ireland.

16. Ms. EVATT, referring to Ms. Medina Quiroga's question regarding inquests, asked whether the repeal of the emergency legislation would lead to the removal of restrictions on the availability of certain evidence to families and coroners.

17. She asked whether certain recommendations of the Blom-Cooper report on holding centres were to be implemented, such as the closure of Castlereagh, the audio-visual recording of interrogations and prompt access to legal aid.

18. The establishment of a Criminal Cases Review Commission was a welcome development, but she asked whether there would be an independent agency to carry out reviews where police action was involved. The inherently unsafe nature of confessions had been revealed in some of the cases concerned. Was there any intention to introduce statutory safeguards such as a judicial warning in regard to confessions?

19. Amnesty International had reported on strip searching, especially of women, before and after closed visits in maximum security prisons. What were the regulations governing strip searches? Did they serve any real security purpose and could prisoners appeal to prevent them?

20. She asked whether the new rules allowing inferences to be drawn from the silence of a defendant would be extended to Scotland, where the legal profession was reportedly opposed to the change.

21. There was no reference in the report to recent allegations by Anti-Slavery International concerning abuse of Filipino domestic workers in the United Kingdom. Had the Government given any consideration to the matter and did it intend to introduce any additional legal protection for domestic workers?

22. Mr. HALLIDAY (United Kingdom) said that tape recordings of police interviews were routinely made in Northern Ireland except in terrorist cases.

23. Under the Police and Criminal Evidence Act, people arrested and held in custody were entitled to consult a solicitor privately at any time. Very strict conditions applied to cases where access to certain persons could be refused during the first 36 hours. The officer in the case had to have reasonable grounds for believing that access to legal advice would lead to interference with or harm to evidence connected with a serious arrestable offence, interference with or personal injury to other persons, the alerting of suspects still at large, or hindrance of the recovery of property obtained as a result of a serious arrestable offence. In cases involving terrorism, the period of 36 hours could be extended to 48 and there were additional grounds for refusal of access. Under the Police and Criminal Evidence Act, the police were told that access to a solicitor could not be delayed on the ground that the solicitor might advise the person not to answer any question. The caution given to arrested persons was very clear on the right to remain silent. However, they were also warned that "it may harm your defence". It was for a court or a jury to decide if any inference might properly be drawn from a person's decision at that stage to remain silent until legal advice became available, which would in any case be within 36 or at the most 48 hours. If a suspect during that initial period spoke after the application of improper pressure, any evidence so obtained would be liable to be declared inadmissible under section 78 of the Police and Criminal Evidence Act.

24. There was no question of compelling suspects to testify against themselves or to confess their guilt and there was hence no violation of article 14, paragraph 3 (g), of the Covenant. As to the presumption of innocence, the prosecution had to produce prima facie evidence and it was the combination of that evidence with any inferences properly drawn that might lay the basis for a conviction.

25. There had, of course, been a very vigorous debate in the United Kingdom about the recent changes in the law. The Criminal Law Revision Committee, a distinguished body of lawyers, had recommended their introduction some time previously. The Government, however, mindful of the issues and concerns involved, had been keen to learn from experience in the application of the provisions in Northern Ireland and had also taken into account the views of the Royal Commission on Criminal Justice, a majority of whose members had been opposed to their introduction. After lengthy consideration, it had eventually taken the view that the provisions for the protection of innocent suspects and defendants were perfectly adequate and that it was necessary to correct the balance to ensure that the guilty were properly convicted.

26. His Government did not accept that persons arrested under section 14 of the Prevention of Terrorism Act were detained for intelligence-gathering purposes. They were detained with a view to instituting criminal proceedings if sufficient evidence became available. They were told that they had been arrested because the officer concerned had reasonable grounds for suspecting them to be concerned in the preparation or instigation of acts of terrorism.

27. The Government wholly understood the sensitivities that existed in the case of ethnic minorities. However, those sensitivities should not prevent necessary action to bring criminals to justice.

28. With regard to the entitlement of prisoners to practise their religion, which was reaffirmed in the current Prison Operating Standards, the role of Her Majesty's Inspector was a positive one, namely to ensure that the entitlement was properly provided for.

29. The incidence of suicide was a matter of great concern. The prison service strategy for preventing suicide was an impressive document and had been included as annex C to the fourth periodic report. The 1994 figures had admittedly been unusually high, but such figures tended to fluctuate unpredictably. Suicide rates in the community at large had also increased. A key part of the prison service strategy had been to develop partnerships with voluntary organizations such as the Samaritans, whose members had been brought into prisons to offer advice to the staff and to befriend prisoners themselves.

30. The issue of establishing a separate, independent force to deal with serious allegations against the police had recently been considered by the Government in connection with investigations that might be required by the new Criminal Cases Review Authority. It had taken the view that the most effective arrangements consisted of a powerful police investigative process and a supervisory authority that would be responsible for approving the powers of the investigating officer, indicating whether an investigation had been conducted satisfactorily, directing that a case should be referred to the Director of Public Prosecutions and recommending disciplinary charges. He pointed out that some of those convicted of terrorist crimes in England and Wales had had their convictions quashed as a result of evidence revealed by police investigations.

31. Since 1983, 71 civilians had died as a result of shooting by the security forces in Northern Ireland (out of a total of 904 deaths during the same period as a consequence of the terrorist campaign). In 54 of those cases, possession by the victim of illegally held or imitation weapons had apparently been involved and had been the main reason why charges had not been preferred. In the remaining 17 cases, where the security forces had shot dead individuals who had subsequently proved to be unarmed, 7 soldiers and police officers had so far been charged with murder, 1 with manslaughter and 2 with attempted murder. Four convictions for murder and one for attempted murder had ensued; one charge of murder, one of manslaughter and one of attempted murder had resulted in acquittals.

32. Allegations of collusion in Northern Ireland between the forces of law and order and the population had been investigated in 1989 by a senior police officer from England, who had concluded that some collusion had indeed occurred, but neither on a widespread nor on an institutionalized basis. Forty-five prosecutions and convictions had followed that inquiry, one involving a sentence of 10 years' imprisonment for conspiracy to murder.

33. Roman Catholic representation in the Royal Ulster Constabulary was actively promoted by a variety of means; one encouraging development was that since the cease-fires 20 per cent of applicants to the RUC had been members of the Roman Catholic community.

34. On the question of whether the police were authorized to grant bail in England and Wales, as an alternative to custody, the answer was in the affirmative, subject to certain conditions.

35. The release of discretionary life-sentence prisoners was subject to detailed consideration by a panel that formed part of the Parole Board; the panel normally comprised a judicial member, a psychiatric member and a lay member.

36. The nature of corporal punishment in schools was a matter for the discretion of the head teacher; such punishment must not constitute inhuman or degrading treatment; in determining whether that condition was observed, regard must be had to all the circumstances of the case, including the reasons for the punishment, how soon after the offence it had been administered, its nature, the manner and circumstances in which it was administered, the persons involved and the mental and physical effects on the pupil concerned. What constituted lawful corporal punishment was a matter for the courts to determine.

37. The possession of items (such as materials for making bombs) and the collection of information (such as details of potential targets) likely to be useful for terrorist purposes were designated as offences under the Emergency Provisions Act 1991, and had been extended to England and Wales by the Criminal Justice and Public Order Act 1994 in response to a clear operational need. Under the provisions of those Acts, the police had been able to frustrate a number of terrorist attacks.

38. On the question of the recording of interviews in Northern Ireland, the introduction of an electronic recording scheme in holding centres had been announced as part of the forthcoming Emergency Provisions Bill should the continuing security situation make that necessary.

39. Notwithstanding variations in traditions and approaches in the different parts of the United Kingdom, inquests were essentially fact-finding inquiries and in no sense criminal investigations or hearings. It was not the business of the coroner to determine whether a killing had been lawful or otherwise or whether civil or criminal responsibility was involved. It was unlikely that the granting of claims for public interest immunity certificates would hamper proceedings in a coroner's court, the aim of which was merely to establish the identity of the deceased and the circumstances of the death.

40. Adding to his earlier remarks on the subject of private prisons, he said that the State established standards and monitored their observance; non-compliance with those standards was sanctioned. His experience as a public servant was that the discipline of a purchaser-provider contract and the introduction of competitiveness could improve supervision and management.

41. The powers of the police in relation to assemblies were strictly delimited by the 1994 Act and the Public Order Act 1986.

42. Stop-and-search powers in Northern Ireland, found relatively effective in discouraging the transport of arms and explosives, had been extended to

England and Wales through section 60 of the Criminal Justice and Public Order Act 1994. As a consequence of the cease-fires, however, those powers were not at present resorted to regularly in either jurisdiction.

43. The transfer of prisoners from England and Wales to Northern Ireland, based on consideration of the individual merits, had been taking place for many years. In 1992, new arrangements for the permanent and temporary transfer of prisoners had come into force; since then, eight prisoners convicted of terrorist-related offences had been temporarily, and three permanently transferred. The Home Secretary had authorized a further three permanent transfers.

44. The Royal Commission recommendations in regard to confession evidence were still under consideration.

45. Conditions at the Castlereagh holding centre were admittedly less than satisfactory. The relocation of the centre had been envisaged, but might prove unnecessary, since use of Castlereagh had fallen drastically since the cease-fires.

46. The matter of the treatment of domestic servants from overseas had been addressed by the Government in an attempt to minimize any possible scope for abuse. Migrant workers were required to apply abroad for entry clearance; interviews in that connection made it possible to check the bona fides of the parties, and to verify that adequate arrangements had been made for maintenance and accommodation in the United Kingdom. Migrant workers received a leaflet outlining their rights and remedies in the United Kingdom, which was also given to their employers.

47. The question of extending the mandate of the Criminal Cases Review Commission to Scotland had been the subject of broad consultation in that country in 1994. The exercise had revealed no widespread dissatisfaction with existing arrangements in Scotland for handling alleged miscarriages of justice and the related issue of appeals criteria, and no consensus on the need for change. An independent committee, headed by the Principal of Edinburgh University, had been appointed to advise on those matters and to report by July 1996 at the latest.

48. The CHAIRMAN invited the United Kingdom delegation to respond to the questions in section III of the list of issues, which read:

"III. Freedom of movement and expulsion of aliens, protection of the family and children, and right to participate in the conduct of public affairs (arts. 12, 13, 24 and 25)

(a) Please provide further information on the functions, powers and activities to date of the Immigration Appeal Tribunal established under the Asylum and Immigration Appeals Act 1993 as well as of the Refugee Legal Centre and the Immigration Advisory Service (see paras. 189 to 190 and 294 to 302 of the report).

(b) Please provide further information on cases where the Secretary of State has certified the claims of asylum-seekers to be 'without foundation' and about the consequent accelerated appeal procedure (see para. 296 of the report).

(c) Please clarify whether in cases where the Asylum and Immigration Appeals Act 1993 withdraws appeal rights (e.g. from visitors and short-term students) the persons concerned are still entitled to submit their cases to judicial review (see para. 299 of the report).

(d) Please describe the impact of the principle of family unity referred to in paragraph 403 of the report on the policy of exclusion, deportation and removal of aliens (see paras. 285 and 289 of the report).

(e) Please explain how the deportations and removals of illegal entrants, refused asylum-seekers or of other persons are carried out in practice. What kind of force may be applied against those persons? Is there any judicial protection against the enforcement of such measures? What is the role of private security firms in the expulsion process?

(f) Please elaborate on the legal situation of and on remedies available to persons who have been excluded under the Prevention of Terrorism (Temporary Provisions) Act 1989. Has the Court of Appeal passed a judgement in the cases R. v. Secretary of State ex parte Gallagher and R. v. Secretary of State ex parte Adams referred to in paragraph 286 of the report?

(g) Please describe the actual circumstances under which a child may be placed in secure accommodation under section 25 of the Children Act 1989 as well as the conditions of deprivation of liberty therein (see para. 270 of the report).

(h) What has been the result of the review of the Government's position whereby convicted, sentenced prisoners are not eligible to vote, in the light of the Committee's comments during the consideration of the third periodic report (see para. 481 of the report)?

49. Mr. HALLIDAY (United Kingdom), responding to question (a), said that the Asylum and Immigration Appeals Act 1993, which extended the powers of the appellate authorities in respect of asylum-seekers, provided a right of appeal against refusal of leave to enter on the grounds that consequent removal would be contrary to the obligations of the United Kingdom under the United Nations Convention relating to the Status of Refugees. Those obligations could also be evoked in an appeal against a decision to issue or refusal to revoke a deportation order. The Act conferred a specific right of appeal on a person seeking such leave on the basis of asylum. It made provision for the appointment of Special Adjudicators to hear asylum appeals. Except in "without foundation" cases, further appeal was possible to the Immigration Appeal Tribunal. If either the Adjudicator or the Tribunal allowed the appeal, the decision and any directives related thereto were binding on the Government.

50. The Immigration Advisory Service, an independent body established in 1993, provided advice and assistance in the matter of immigration right of appeal; it had helped 5,800 people in 1993-1994; its budget from the Home Office for 1995-1996 amounted to £2.6 million. The Refugee Legal Centre, also created in 1993 and an independent body, had counselled 15,850 asylum-seekers with rights of appeal; it was funded for 1995-1996 with a grant of £3.6 million. Habeas corpus in relation to detention under the 1993 Act was available exactly as it was in relation to the exercise of any other power of detention, subject to the satisfaction of certain conditions, namely determination that leave had been curtailed on a rejected asylum claim and that the individual concerned was in detention pending the issuance of a deportation order.

51. In relation to paragraph (b) of the list of issues, he said that the Asylum and Immigration Appeals Act 1993 introduced a special appeals procedure for "without foundation" asylum claims, in other words claims which in the opinion of the Secretary of State did not raise any issue as to the United Kingdom's obligations under the Convention relating to the Status of Refugees - either because the applicant could be returned to a "safe third country", i.e. one in which the life or the freedom under the Convention of the applicant would not be threatened and whose Government would not send the applicant elsewhere in a manner contrary to the principles of the Convention, or because the claim was otherwise frivolous or vexatious. Such cases were considered on their merits. All persons denied asylum, including those whose claims had been certified as without foundation, had a right of appeal, before removal, to an Independent Adjudicator. An accelerated procedure came into play once such an appeal was received by the authorities, statutory time-limits being established for the hearing and determination of those appeals, as set out in the Asylum Appeals (Procedure) Rules 1993. If the case was without foundation, the Special Adjudicator had seven days in which to determine the appeal. In cases not certified as without foundation, the time-limit was 42 days. Adjudicators had complete discretion regarding the amount of time devoted to an appeal and whether to grant adjournments, and could also extend the statutory time-limits if necessary. All asylum applicants had access to free advice and representation on appeal from the Refugee Legal Centre. They could also apply for legal aid, although that was not available for representational purposes. If the Adjudicator agreed that the claim was without foundation, there was no further right to approach the Tribunal; but the applicant could apply to the courts for judicial review of the decision.

52. The answer to the question posed in paragraph (c) of the list of issues was in the affirmative, subject to obtaining leave of the High Court - a condition of all judicial review applications in England and Wales.

53. Concerning question (d), he said that while the Immigration Rules made it clear that deportation would be the normal course of action where a person had breached the immigration law, a decision to enforce removal was taken only after all the relevant facts had been considered. In considering the deportation or removal of an illegal entrant with close family ties, the effect of such action on other family members was also taken into account. Where it was decided that the presence of close family ties did not outweigh the public interest in proceeding with removal, family members would be given the opportunity of accompanying the principal family member, at public expense if necessary. Cases where there were known to be close family ties were

excluded from the delegation arrangements for the removal of illegal entrants alluded to in paragraphs 290 and 291 of the report (CCPR/C/95/Add.3). In the matter of exclusion, the Secretary of State was bound by law, before making an exclusion order, to consider whether the person's connection with any country other than that from which he was to be excluded made such an order appropriate. A British citizen might not be excluded from that part of the United Kingdom where he was ordinarily resident and had so been for the previous three years. A British citizen could not be excluded from the United Kingdom. The purpose of exclusion was not to ban people from their own home territory, which would not be lawful, but to hinder those who would travel to an area in order to carry out an attack and then return home. Such powers of exclusion were quite different from those under the Football Spectators Act referred to in paragraphs 287 and 288 of the report: orders under that Act were made following conviction for a football-related offence and were designed to do no more than prevent a person from attending subsequent football matches for the duration of the order.

54. Turning to paragraph (e) of the list of issues, he said that a person to be deported or removed as an illegal entrant would be served with a notice notifying him of the decision. There were no separate arrangements for the removal of refused asylum-seekers. If they failed to leave voluntarily, they were either removed under deportation powers or as illegal entrants. At the time the notice was served they would be notified of any appeal rights. Once the appeal had been determined or where no further appeal right existed, arrangements would be made for removal. The subject of the notice would normally be given an opportunity to present himself voluntarily at the port of departure. However, if the person was likely to abscond or was detained, he would be taken to the port of departure and held there in secure conditions until boarding the aircraft. Restraints were not the norm, but were used only when justified by the circumstances. In considering the need for restraints, the safety and security of the detainee and the safety of the escort and the public were foremost considerations. Once the person was on board an aircraft, any restraint must be approved by the captain. The independent review following upon the tragic case to which Mr. Francis had referred had led to the recommendation that when a person being removed behaved violently or disruptively, handcuffs should be available for use in accordance with ordinary police practice; in addition, the use of arm and leg restraints under strictly controlled conditions could be justified when the detainee could not adequately be restrained with handcuffs. A third recommendation was that the recourse to mouth restraints, which had clearly been linked with the outcome in the case referred to, and which had been immediately suspended at the time, should not be resumed. All those recommendations were now in effect, and there was no question of the mouth restraints being used again.

55. In most cases, once the individual had been taken into custody, escort duties would be performed by private-sector security companies under contract to the Immigration Service. In a few cases where, for instance, past behaviour indicated that determined or violent resistance was likely, an in-flight escort by appropriately skilled police officers would be necessary in order to effect safe removal. Escorts were reminded of their responsibilities and liability in respect of section III of the Criminal Law Act 1967.

56. Concerning paragraph (f) of the list of issues, he said that persons excluded under the Prevention of Terrorism Act could, if they objected to the

order, make representations in writing to the Secretary of State, setting out the grounds for objection and including in those representations a request for a personal interview with a person or persons nominated by the Secretary of State. Such representations must be made within seven days of the service of the notice or the making of the order unless the person concerned consented to removal before the end of that period or was already abroad; in the latter case 14 days were allowed in which to submit representations. Under the same schedule of the Act, the representations must be referred for advice to one or more persons nominated by the Secretary of State. Three such persons had at present been nominated. Their names were not published but they were persons of standing, and two of them were Queen's Counsels; their independence could not be doubted.

57. A person who submitted representations must be granted a personal interview. In the case of a person who had left the country, and if it appeared to the Secretary of State to be reasonably practicable to do so, such an interview might be granted in an appropriate country or territory within a reasonable period from the date on which the representations were made. His delegation was not aware of any case in which a request for interview had been turned down on grounds of impracticability. The Secretary of State was required to reconsider the exclusion order as soon as reasonably practicable after receiving the representations and any report of an interview with the adviser. In reconsidering the order the Secretary of State, under paragraph 42 of the Act, was required to take into account everything which appeared to him to be relevant.

58. It was reliably reported that the Secretary of State had invariably accepted the advice of his independent advisers in recent years. He was required, if reasonably practicable, to give notice in writing to the persons against whom the exclusion order had been made of any decision as to whether or not to revoke the order. An exclusion order expired after three years unless it was revoked earlier. The Secretary of State could revoke an order at any time.

59. Concerning R. v. Secretary of State ex parte Gallagher, the questions referred by the Court of Appeal awaited a ruling by the European Court of Justice. The oral hearing had only recently taken place.

60. Following the announcement of a cease-fire on 31 August 1994 by the Irish Republican Army (IRA), the Secretary of State had reviewed all exclusion orders then in force. On 21 November 1994 he had decided to revoke the exclusion order against Mr. Adams. In those circumstances the Secretary of State had taken the view that any further consideration of Mr. Adams' application for judicial review and the article 177 reference to the European Court of Justice had become academic. The High Court had accepted that argument.

61. With regard to paragraph (g), he said that certain criteria must be met before a child could have his liberty restricted under section 25 of the Children Act 1989. Firstly, the child must have a history of absconding and be considered likely to abscond from any accommodation other than secure. Secondly, there must be grounds for believing that in absconding he was likely to suffer significant harm ("harm" being defined as ill-treatment or the impairment of health or development). A further criterion required that if the child involved was kept in other than secure accommodation he must be

likely to injure himself or others. Restriction of the liberty of children was a serious step and must therefore only be taken when there was no possible alternative; the law made it clear that placement in secure accommodation must be a last resort.

62. Subject to certain conditions applying to remanded and detained children, it was unlawful for the liberty of a child to be restricted unless one of the criteria he had mentioned was met, no matter how short the time in security. Once the criteria ceased to apply, even if there was a current court order authorizing restriction of liberty, it must be lifted. Interpretation of the term "restriction of liberty" was a matter for the courts, but any practice or measure which prevented children from leaving a room or building of their own free will was to be deemed restriction of liberty. He listed a number of other safeguards in that connection.

63. Concerning paragraph (h), and the question of prisoners' eligibility to vote, he saw that the Government had carefully reviewed the position and remained of the opinion that the exclusion should not be lifted. It did not appear to the United Kingdom that article 25 of the Covenant conferred an absolute right to vote; the view that those convicted of crimes serious enough to justify imprisonment had lost the moral authority to vote for the period in question thus seemed permissible.

64. The CHAIRMAN invited Committee members to pose additional questions in relation to section III of the list of issues.

65. Mr. BRUNI CELLI said that the scant reference in section III of the list of issues to article 25 of the Covenant was not indicative of a lack of interest in its application in the United Kingdom. Referring to paragraph 31 of the core document (HRI/CORE/1/Add.5/Rev.1), he noted that "people sentenced to more than one year's imprisonment" were among the many categories of persons disqualified or precluded from election, and asked whether the nature of the offence was immaterial and whether the disqualification was permanent. Did persons awaiting trial have the right to vote? Why were clergy of the different Churches disqualified from election? Remarking that a large number of public officials were also precluded, he submitted that all those limitations appeared to call the principles of article 25 of the Covenant in question.

66. He inquired whether any legislation was proposed with the aim of increasing the participation of ethnic minorities in public life. How could the first sentence of paragraph 31 of the core document, according to which, subject to the same conditions, "any man or woman" might stand as a candidate at a parliamentary election, be reconciled with the fact that less than 10 per cent of British MPs were women? And how could the principle of popular representation as set forth in article 25 of the Covenant be reconciled with the institution of the House of Lords?. Finally, he noted that for a person to be eligible in a particular constituency, his or her name must be placed on the current electoral roll, and asked whether members of the public were fully informed of that prerequisite. It seemed to him that such "positive registration" might indirectly amount to a restriction of the exercise of the rights set forth in article 25.

67. Ms. EVATT said that for her, the state of human rights in a given country could be roughly gauged by comparing the numbers of people seeking to leave

with the numbers of those seeking to enter. By that yardstick, the United Kingdom showed a healthy balance. Nevertheless, she had certain concerns on issues of citizenship, immigration and the granting of asylum. She welcomed the institution of an in-country right of appeal; but was more doubtful with regard to the "safe third country" provision: could such countries be relied upon under all circumstances to deal with an asylum-seeker's claims? The introduction of visa requirements for nationals of countries where circumstances produced many asylum-seekers might have a restrictive effect.

68. She was further concerned about the growing number of persons held in detention for more than three months with no means of challenging the merits, as opposed to the legality, of their detention, and would welcome information concerning the proposed new legislation in that connection. Alluding to a case mentioned in documentation from the NGO Democratic Audit, she inquired whether consideration would be given to providing protection against discrimination in public service employment, including military service, on grounds of sexual preference.

69. Mr. KRETZMER, referring to the decision in R. v. Secretary of State ex parte Cheblak at the time of the Gulf crisis, asked whether any mechanism existed to review any security conditions invoked to justify the deportation of a resident non-citizen from the United Kingdom.

70. Referring to paragraph 289 of the United Kingdom report and the table showing numbers of persons deported under the Immigration Acts 1971 and 1988, he asked whether, once a deportation order had gone through the entire appeals procedure, the person about to be deported was still kept in detention; and whether such persons could be held in detention indefinitely until a country was found that would accept them.

71. Mr. KLEIN asked what was the legal basis for the exercise of force against illegal immigrants and refused asylum-seekers, and for the delegation of the right to use force to private security firms.

72. Mr. ANDO asked who initiated the procedures under which a child might be placed in secure accommodation under section 25 of the Children Act 1989, and whether such accommodation was regarded as part of the social welfare system or of the prison system; he also inquired whether a medical doctor was involved at any stage.

73. Mr. LALLAH, referring to paragraph 482 of the report, asked who it was who declared an election to be invalid because the elected candidate had exceeded the specified limit of his campaign expenditure. Article 25 (a) of the Covenant conferred on every citizen the right and the opportunity to take part in the conduct of public affairs directly or through freely chosen representatives, and he wondered, in view of recent cases of MPs taking cash for asking questions in the House of Commons, to what extent the Government of the United Kingdom protected the right of citizens to be properly represented, and not represented by people who were really trying to represent themselves. He realized that the matter was under discussion by the Nolan Committee, but he wondered if any consideration was being given to providing MPs with a reasonable level of pay so that becoming an elected representative

was a possibility available not only to the comfortably off and to those who were tempted to make some money on the side, but also to poor people.

74. Mr. POCAR requested further information regarding the White Paper which the Government would be publishing regarding privacy and media intrusion, referred to in paragraph 371 of the report.

75. Mr. HALLIDAY (United Kingdom) referred Ms. Evatt to the rights of appeal available under section 38 of the Asylum and Immigration Appeals Act 1993 regarding the merits of asylum cases.

76. He referred Mr. Bruni Celli, on the question of the United Kingdom's electoral arrangements, to the full exposition set out in its initial report under article 25. As for the appointment of women, ethnic minorities and the disabled to public bodies, the Government had always made clear that it wished to increase their representation, and there had been a number of government initiatives to that effect; indeed, since 1992 appointments to public bodies had been monitored for that purpose. Representation in the House of Commons was a matter for the political parties and the due electoral process rather than for the Government.

77. He explained to Mr. Ando that it was the social services departments under the local authorities which brought cases for placing children in secure accommodation under section 25 of the Children Act 1989 if detention was for longer than 72 hours. Accommodation was run by or under the supervision of such departments; it was completely outside the prison detention system.

78. As for Mr. Lallah's point regarding the "cash for questions" affair in the House of Commons, he said that the Government had made its position clear regarding the report of the Nolan Committee, and in fact many of the matters involved would be considered by the House of Commons as a whole. Although the issue of MPs' pay had been raised in that connection, it was not really related to the wealthy being able to enter the House of Commons more easily than the poor.

79. Mrs. EVANS (United Kingdom), replying to a question regarding the opportunities for seeking review of decisions to deport in security cases, said that a deportee in such cases did not possess the appellate rights under the Immigration Act that ordinary deportees had, but did have recourse to a panel commonly referred to as "The Three Wise Men". Domestic courts had held that the procedures before that panel were basically reasonable and fair. If, as a result of the review, the decision to deport was upheld, it was still open to the prospective deportee to seek judicial review of the Secretary of State's decision in the Divisional Court.

80. As for the position regarding detention in cases where it proved impossible to deport someone because there was no country to which he might be sent, she said that a power of detention arose under the immigration legislation once a deportation order had been made only while the deportation was pending; consequently, if it became apparent that indeed there was no country to which the person could be sent, the power to detain on the strength of the deportation fell.

81. Finally, with regard to the question concerning the legal authority for handing over immigration cases to private security firms, she referred the Committee to paragraph 18.3 of Schedule 2 to the Immigration Act 1971, and to paragraph 2.4 of Schedule 3 to that Act.

82. Mr. HALLIDAY (United Kingdom) said that the White Paper on privacy and media intrusion referred to by Mr. Pocar had only recently been announced and he had no further information on it. As for prisoner escorts by private security firms, prisoners were subject to prior assessment to ensure that there was no history of violence and no likelihood of violence; if there was, the police would be present.

83. The CHAIRMAN invited members of the Committee to make concluding remarks.

84. Mr. POCAR praised what he said was a model report which conformed fully to the Committee's guidelines, and commended the delegation's frank and comprehensive approach to the dialogue. There had been improvements in human rights guarantees in the United Kingdom, but there were still issues that caused the Committee concern; he himself could not easily accept that neither incorporation of the Covenant into domestic legislation nor ratification of the Optional Protocol was necessary.

85. Mr. PRADO VALLEJO said the dialogue which had taken place had been important and positive and, he hoped, would prove beneficial. The Committee still had some concerns regarding the United Kingdom, but trusted that they would be allayed. The report made it clear that there had been no progress with regard to incorporation of the Covenant into domestic legislation, ratification of the Optional Protocol or the status of reservations, and he sincerely hoped that the Government of the United Kingdom would give consideration to the views on those points which the Committee had been expressing for the past 18 years. Immigrants and asylum-seekers were treated in inhumane ways which were at variance with the Covenant. As for detention without a court order in terrorism cases, he observed that even criminals should be able to enjoy the rights enshrined in the Covenant. He hoped that the fifth periodic report of the United Kingdom would meet with the Committee's full approval.

86. Mr. BUERGENTHAL said there was no doubt that the United Kingdom had a highly developed legal and constitutional system for the protection of human rights, and had taken important steps in recent years to strengthen human rights guarantees. He was convinced that incorporation of the Covenant into domestic legislation and ratification of the Optional Protocol would strengthen human rights guarantees in the United Kingdom, and he was more optimistic on that score following the efforts of Lord Lester. The fourth periodic report was a very fine one and the delegation had been extremely frank with the Committee, but he had continuing worries about the investigation of abuses committed by the police, about the inferences that were drawn from the silence of an accused, about the failure to give all accused persons the right to consult a solicitor during the first 36 hours of their detention, and in general about the danger that efforts to deal with increased crime might trample on elementary principles of justice.

87. Mr. LALLAH congratulated the delegation on its concise but comprehensive answers to the Committee's questions and on its high-quality report. Progress

had indeed been made, but much remained to be done. There should be an easing of the conditions of those who were detained and of the situation of those against whom discrimination still prevailed. It would be desirable for the Covenant to be incorporated into domestic legislation, and for the United Kingdom to ratify the Optional Protocol. He referred the delegation to article 40 of the Covenant regarding progress in the enjoyment of human rights, and article 2, paragraph 3, on measures to be taken. Especially in situations where everything was supposedly provided for by common law and the judiciary was respectful of its role in a system that recognized the separation of powers, and was reluctant to apply the rights enshrined in the Covenant unless some appropriate precedent was found, it would be to the benefit of the people of the United Kingdom if the Government acceded to the Optional Protocol. Much of the legislation in his own country, Mauritius, derived from that of the United Kingdom. He found it somewhat ironic that the United Kingdom had inserted a bill of rights into the Constitution of Mauritius, when it had no similar bill for itself.

88. Mr. KRETZMER said he was very pleased with the report and in particular found the annexes extremely useful. The delegation had answered the Committee's questions in a highly professional manner, putting the Government's views very persuasively, even if the Committee had not always accepted them. A sincere attempt was constantly being made in the United Kingdom to address human rights issues and endeavour to find solutions to them; an indication of the healthy state of human rights in the United Kingdom was the vibrancy of the NGOs operating in that area. As for Northern Ireland, the Committee was aware that the basic problem was a political one, although there were still human rights issues that had to be divorced from the political situation of which they were to a large extent a function. Efforts had been made to deal with complaints against the police and allegations of abuse of power by the authorities in Northern Ireland, but in the highly charged political situation, it seemed unlikely that those efforts would acquire the requisite degree of credibility. Allegations against the police should not be investigated by the police. However, he welcomed the progress that had been made in improving prison conditions, notably with regard to sanitation. It was impossible to legislate discrimination against ethnic minorities out of existence, but it was particularly important to step up efforts to ensure their fair representation in all areas and at all levels of society, especially in the police force. He hoped that the fifth periodic report would contain figures that would show that those efforts had been successful. Finally, he welcomed the fact that corporal punishment was now limited to private educational institutions, although he hoped that by the time of the next periodic report it would have been eradicated altogether.

89. Mr. EL SHAFEI said the exchange of views had clarified many of the problems about which the Committee had been concerned. Progress had been made in a number of areas since the third periodic report, notably with regard to criminal justice, prison conditions and race relations, but some of the concerns the Committee had expressed with regard to the third periodic report had still not been fully allayed. Despite the announcement of a cease-fire in Northern Ireland and the subsequent negotiations, the police were still using excessive force and very liberal firearms regulations were still in operation. He himself remained concerned about the rights of asylum-seekers and about discrimination in the application of immigration laws. The United Kingdom

should review its position on the reservations it had made on acceding to the Covenant and on ratification of the Optional Protocol; it should also give more thought to a bill of rights. Such matters were particularly important in view of the fact that the Covenant differed in certain substantive respects from the European Convention on Human Rights.

90. Mrs. CHANET praised the report and the clarifications given by the delegation, noting that the Committee had inevitably given insufficient emphasis to the positive aspects of United Kingdom human rights guarantees. There had been important progress in relation to the Northern Ireland peace process, in improving prison conditions, and in the re-examination of criminal cases, but the Committee still had concerns regarding incorporation of the Covenant into domestic law, reservations to the Covenant and non-accession to the Optional Protocol. There was a movement in the United Kingdom in the direction of incorporation, and she hoped that there would be some development in the area of reservations, because the United Kingdom had acknowledged that three of them really amounted to derogations. She hoped that by the time of the fifth periodic report, the United Kingdom might have been convinced that accession to the Optional Protocol really did represent major progress for the guarantee of human rights. As for the law on the right to silence, it was certainly conducive to repression despite the precautions that were taken, and to that extent was to the detriment of the individual, whether innocent or guilty. With regard to Northern Ireland, she hoped that the fundamental rights of individuals in the province would soon be treated not only in terms of political self-determination but in their own terms as well.

91. Ms. MEDINA QUIROGA said that she was grateful to the United Kingdom delegation for its efforts to provide concise answers to the questions raised; she was also grateful to learn that some of the Committee's concerns were under consideration in that country. She regretted, however, that not all the answers provided by the delegation of the United Kingdom laid the Committee's preoccupations to rest. It was particularly disturbing that not all the provisions of the Covenant were reflected in British law. Under such circumstances, if a discrepancy arose, the Covenant was in essence unenforceable. And what, ultimately, was the point of ratifying an international instrument if it could not be enforced? Furthermore, it would be preferable if individuals could address their concerns directly to the Committee; ratification of the Optional Protocol would considerably broaden the efficacy of the Covenant in that country.

92. She would have liked an explanation concerning the enjoyment by Scotland of the rights guaranteed under articles 1 and 25; it seemed clear that many people in that country were dissatisfied with their constitutional arrangements. Furthermore, while the United Kingdom delegation had confirmed her understanding of the purpose of the inquest procedure in force in Northern Ireland, it had not explained why those measures were different from those applicable in England and Wales, where an inquest could result in a finding of manslaughter. It was her belief that the situation obtaining in Northern Ireland was essentially a political one; the British Government should be reminded, however, that there were certain minimum human rights standards that should be respected in all circumstances.

93. It was her view that British judicial procedures violated the right to silence guaranteed under the terms of the Covenant; she would recommend that that country should repeal the relevant legislation.

94. Finally, the situation of women in the United Kingdom was indeed a grave problem; the next report should describe cultural measures undertaken by that country to end discrimination against women.

95. Mr. BÂN said that, while it was perhaps disappointing to find that the basic approach of the Government of the United Kingdom to the matter of human rights had not altered, developments that had taken place in particular areas of concern were encouraging. He agreed with Mr. Buergenthal and Mrs. Chanet that the debates that followed on the submission to Parliament of the Human Rights Bill by Lord Lester demonstrated that, after a long period of resistance, the incorporation issue was under reconsideration - and that, despite the failure of the Bill to win universal acceptance. While such issues as the incorporation of the provisions of the Covenant into domestic law, the ratification of the Optional Protocol and the withdrawal of reservations were crucial, they were not the sole factors influencing the enjoyment of human rights in the United Kingdom. It was clear that the status of human rights had progressed considerably in that country, the many remaining areas of concern notwithstanding. But it would perhaps be found that the factors adversely affecting the exercise of human rights in the United Kingdom had a common root in the transformation of British society from homogeneity to diversity. Public awareness of the principles of human rights was assuredly not yet adequate. He thanked the delegation for the excellence of the report and for the candid spirit in which the dialogue had been conducted.

96. Mr. KLEIN commended the United Kingdom for its fine report and for the fruitful dialogue that had ensued. While the many favourable changes that had taken place since the time of the third periodic report were welcome, they also demonstrated the extent to which those improvements were necessary. The delegation had stated, in reply to a question raised by Ms. Evatt, that conditions at the Castlereagh holding centre were less than satisfactory. Yet it had also assured the Committee that human rights were sufficiently protected under domestic law. There was an inherent contradiction in those two remarks. The delegation had also argued that since in the United Kingdom the notion of the general right to liberty obtained, there was no need to identify specific rights in a bill of rights. While that notion was indeed shared by all the Western liberal democracies, each of those countries boasted its own bill of rights. The argument was thus unconvincing. Furthermore, domestic guarantees should be supported by international undertakings which were at the direct disposal of individuals. It was the combined effect of the non-incorporation of the Covenant into domestic law and the reluctance to accede to the Optional Protocol which was above all so worrisome. Prison conditions and the status of the right to silence also remained troublesome. He was concerned as well by the practice of contracting out essential State functions to the private sector; in his view, that was not merely a theoretical but also a practical consideration, which would surely give rise to further debate. Finally, the differences of opinion that had emerged during the course of the dialogue should be seen as a starting-point for the reconsideration of the issues raised.

97. Mr. BHAGWATI expressed his satisfaction at the wealth of information supplied by the United Kingdom in its report, and at the highly professional presentations made by the United Kingdom delegation. He congratulated that country on taking seriously its obligations under the Covenant and on pursuing a fruitful, constructive dialogue with the Committee. The report indeed showed that considerable progress had been made in the United Kingdom towards fuller compliance with the provisions of the Covenant and bore testimony to its firm determination in that regard. Even so, several matters combined to give cause for concern. The foremost was the declared reluctance on the part of the Government of the United Kingdom to incorporate the provisions of the Covenant into domestic law. He was unconvinced by the arguments adduced by the delegation in that regard. The delegation had quoted from a speech delivered by Lord Donaldson, former Master of the Rolls, which invoked historical tradition to justify the Government's stance. But it should be recalled that there existed a considerable body of contrary opinion of great weight and authority. The renowned English judge Lord Scarman had, for example, pleaded passionately for the adoption of a bill of rights. It should further be noted that on independence every former British colony had adopted a bill of rights, largely influenced by international human rights instruments. But whether by incorporation of the provisions of the Covenant into domestic legislation or by the enactment of a bill of rights, the United Kingdom was bound by article 2, paragraph 2, to bring its laws into conformity with the provisions of the Covenant. Common law clearly did not reflect all the rights guaranteed in the Covenant, despite the judicial activism of British judges. The Government of the United Kingdom was further bound under the terms of paragraph 3 of that article to ensure that every person had an effective remedy with which to enforce his rights under the Covenant. How was that effective remedy provided to an individual in the United Kingdom if the rights guaranteed under the Covenant were not incorporated into domestic law? In his view, non-incorporation was a clear violation of article 2, paragraphs 2 and 3.

98. Furthermore, he could not accept the explanation offered by the delegation with regard to the right to silence. A judgement rendered by the House of Lords, in the case of Kevin Murray had held that, where the prosecution made a prima facie case and the defendant refused to testify, a judge or jury might draw inferences from that refusal, among them the inference that the accused was guilty of the offence as charged. It went on to state that, while the accused could not be obliged to give evidence, he risked consequences if he declined to do so. That was a Hobson's choice. Permitting adverse inferences to be drawn from the silence of the accused was a means of compulsion, and, by effectively nullifying the right to silence, constituted a violation of the Covenant.

99. Finally, he was glad to learn that the report was made available to NGOs and members of the public by the Home Office; he trusted that all those who wished to obtain a copy could readily do so.

100. Mr. ANDO commended the delegation of the United Kingdom on that country's excellent report and its competent responses to the concerns raised. While the Committee's comments and questions might indeed have seemed harsh, it should be remembered that they were proffered with the best of intentions.

101. He had several concluding observations. Firstly, the United Kingdom's reservations to the Covenant that referred to "other provisions of the Covenant" were too vague and should be reassessed. Secondly, with regard to the objections raised by Mr. Berman to several points discussed in general comment 24, he would read the relevant paper with great interest before formulating an opinion. Thirdly, with regard to the matter of the right to silence, he shared the views expressed by Mr. Bhagwati. Fourthly, in the light of the economic depression that had taken place in western Europe and of the resurgent xenophobia that had attended it, he understood the Government's desire to regulate the flow of immigrants. Yet, under the circumstances, the United Kingdom should do its utmost to protect the human rights of such persons. Finally, he associated himself with the views of Ms. Medina Quiroga with respect to the status of women in that country.

102. Ms. EVATT said that various favourable developments had taken place in the United Kingdom in the area of human rights. She particularly welcomed a number of judicial decisions on human rights issues, among them decisions taken at the European level. She also noted with satisfaction the various prison reforms that had taken place, the creation of the post of prison ombudsman, the establishment of the Criminal Cases Review Commission, and the newly introduced practice of recording interviews. It was worth mentioning that England and Wales were among the few places in the world where police did not carry arms. While that favourable phenomenon was certainly overshadowed by the circumstances prevailing in Northern Ireland, there too progress had been made. Emphatically, if the right to life was to be upheld, the death of an individual while in the hands of authorities must be met with a thorough, impartial and open investigation. Failure to investigate and where necessary to prosecute could only cause crises of confidence in families and communities.

103. Having read the warning provided to the accused with regard to his right to maintain silence, she considered it to be unsatisfactory. In a press cutting in her possession, a policeman was cited as telling an interviewee that the warning meant that if he chose not to answer a question, the jury would assume that he was guilty. While she understood that such was not its intent, the warning might well in practice prejudice the jury as to the guilt of the accused, regardless of its wording. A related concern - the extension of that provision to Scotland whether or not the Scots so wished - illustrated a larger question she had raised earlier: how to enable the Scots and the Welsh to play a full and equal role in the conduct of those public affairs that related to their own interests.

104. She likewise found it unfortunate that the seven-day detention rule still applied; it seemed that, despite the cessation of hostilities, a fundamental right remained subject to derogation. The United Kingdom should perhaps consider the establishment of some form of judicial supervision over that matter.

105. Endeavours to strengthen anti-discrimination legislation were welcome, as were efforts to recruit police from various ethnic communities. In the area of discrimination it was nevertheless clear that much progress remained to be made. Discrimination in the military on grounds of sexual preference was an issue that demanded attention; in particular, the potential targets of such discrimination should be provided with adequate legal protection. She had two

points to raise with regard to discrimination against women. Firstly, thought should be given to introducing legislation that would take into consideration the principles that had come to light in the recent judicial decision concerning provocation in the case of a woman who had murdered her partner. Secondly, while rape and other sexual offences were in fact addressed by criminal legislation, the Government should consider implementing programmes for the related training and education of the police and judiciary.

106. Finally, she wholeheartedly endorsed the views expressed by Mr. Bhagwati in the matter of the incorporation of the Covenant into domestic law.

107. Mr. FRANCIS said that he first wished to congratulate Mrs. Higgins on her election to the International Court of Justice; she had undoubtedly made a monumental contribution to the work of the Committee, and was sure to make an equally impressive contribution to that of the Court.

108. He was grateful to the British delegation for its answers to the questions he had raised. Of particular satisfaction was the information offered concerning the arrest and death of Joy Gardner. The decision of the Home Secretary would, he was sure, gladden the hearts of many people throughout the world.

109. He joined with other members of the Committee who had recommended that the Government of the United Kingdom should enact a bill of rights, ratify the Optional Protocol and review the status of the right to silence in domestic legislation. Finally, he shared Mr. Lallah's concerns with regard to the Privy Council.

110. Mr. HALLIDAY (United Kingdom) said that he wished to take the opportunity to join with those who had paid tribute to Mrs. Higgins, whose presence in the Committee would be greatly missed. He further wished to thank the members of the Committee for their generous remarks. The discussion had, as anticipated, been a rigorous one. In his view, the concluding observations had usefully highlighted areas of particular concern to the Committee, as well as those areas where disagreement remained.

111. The CHAIRMAN congratulated the United Kingdom on its excellent report, and on the frank and open spirit in which the dialogue had been conducted. There had undoubtedly been many favourable developments in the area of human rights in the United Kingdom in recent years. Regarding the rigour of the questions and comments formulated by the members of the Committee, he observed that it was the Committee's aim to ensure that the human rights of all those whose Governments were States parties to the Covenant enjoyed the exercise of their human rights. He was grateful to those NGOs and individuals that had offered information to the Committee; in his view, the number of independent submissions received by the Committee in relation to a State party's report was a measure of the status of human rights in that country. He informed the members of the Committee that the paper prepared by Mr. Berman and his colleagues in response to general comment 24 had been received and would be distributed to them shortly. Finally, he noted that the fifth periodic report of the United Kingdom was due on 18 August 1999.

The meeting rose at 1 p.m.